

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

American River Trees, et al. v. Central Valley Protection Board, et al.

American River Trees · No. 2:25-cv-02384-DC-CSK · Decided November 20, 2025

SUMMARY

The United States District Court for the Eastern District of California granted Plaintiffs’ motion for a preliminary injunction in a challenge to federal and state approval and implementation of portions of the American River Common Features 2016 Flood Risk Management Project. The court found serious questions concerning whether the U.S. Army Corps of Engineers adequately considered bioengineering and other alternatives under the National Environmental Policy Act, and it addressed irreparable environmental harm, the balance of equities, and the public interest. The injunction sought to prevent ground- or vegetation-disturbing activities, including tree removal, in the Contract 3B area.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
WRITING FOR THE COURT	Dena M. Coggins
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	November 20, 2025
DOCKET	2:25-cv-02384-DC-CSK
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiffs sought a preliminary injunction under Federal Rule of Civil Procedure 65 to halt ground- and vegetation-disturbing activities under Contract 3B of the American River Common Features 2016 Flood Risk Management Project while their claims under the Wild and Scenic Rivers Act, California Wild and Scenic Rivers Act, NEPA, and CEQA proceeded.
STANDARD OF REVIEW	A preliminary injunction requires consideration of likelihood of success on the merits, likelihood of irreparable harm, the balance of equities, and the public interest under Winter v. Natural Resources Defense Council, Inc. The Ninth Circuit's sliding-scale approach permits serious questions on the merits when the balance of hardships tips sharply toward the plaintiff, irreparable injury is likely, and the injunction is in the public interest. The court reviewed the NEPA agency action under the APA's arbitrary-and-capricious standard,

	applying a deferential and narrow review and a rule-of-reason analysis to the EIS alternatives discussion.
PRECEDENTIAL VALUE	Unknown
PARTIES	American River Trees, Save the American River Association, Center for Biological Diversity v. Central Valley Flood Protection Board, U.S. Army Corps of Engineers, U.S. National Park Service

TOPICS

environmental impact review

administrative procedure act

judicial review of agency action

injunctions

injunction bonds

PRACTICE AREAS

environmental law

administrative law

environmental impact review

civil procedure

equitable relief

QUESTIONS PRESENTED

1. Whether plaintiffs demonstrated serious questions on the merits of their NEPA and APA claims based on the Army Corps' failure to analyze or explain the elimination of a bioengineering alternative for Contract 3B.
2. Whether plaintiffs demonstrated a likelihood of irreparable environmental and recreational injury absent preliminary relief.
3. Whether the balance of equities and public interest favored enjoining vegetation-clearing activities pending a decision on the merits.
4. Whether the court should require plaintiffs to post security under Federal Rule of Civil Procedure 65(c), and if so, in what amount.

HOLDINGS

1. Plaintiffs demonstrated serious questions as to whether the Army Corps considered a reasonable range of alternatives required by NEPA and whether its adoption of the record of decision and 2025 Final SEIS/SEIR was arbitrary or capricious under the APA. The agency's failure to discuss bioengineering as a reasonable alternative or as an alternative eliminated from detailed study, despite its prior representations that bioengineering would be analyzed, was sufficient at the preliminary-injunction stage.
2. Plaintiffs demonstrated that they were likely to suffer irreparable harm absent an injunction because the planned removal of mature and heritage trees would cause environmental injury and impair their members' specific recreational, aesthetic, and other interests in the affected area.
3. The balance of equities tipped sharply in plaintiffs' favor and the injunction was in the public interest because the likely environmental harm from clearing mature trees outweighed the asserted economic and flood-risk harms from temporarily delaying only Contract 3B vegetation-clearing activities.

4. The court exercised its discretion to require only a nominal \$1,000 bond rather than the \$256,815 bond requested by federal defendants.

KEY QUOTATIONS

“The “touchstone” of the court’s review of an EIS “is whether an EIS’s selection and discussion of alternatives fosters informed decision-making and informed public participation.”” (at 24)

“Accordingly, Plaintiffs have demonstrated at least a serious question on the merits as to whether Defendant USACE considered a reasonable range of alternatives as required by NEPA and whether Defendant USACE’s adoption of the ROD and 2025 Final SEIS/SEIR was arbitrary or capricious in violation of the APA.” (at 25)

“The proposed injunction will only prevent Defendants from proceeding with vegetation clearing activity as authorized by Contract 3B.” (at 38)

“Instead, the court will require Plaintiffs to post a \$1,000 nominal bond.” (at 41)

FACTUAL BACKGROUND

The challenged Contract 3B is part of a federal and California flood-risk-management project along the Lower American River. It authorizes installation of riprap and related erosion-control measures, removal of at least 675 mature trees, including some heritage trees, and trimming of more than 1,100 trees in the American River Parkway. The Army Corps had previously represented that bioengineering measures would be analyzed as potential alternatives for bank protection, but the 2023 Draft SEIS/SEIR did not analyze bioengineering as an alternative or explain why it was eliminated from detailed study. Vegetation clearing was scheduled to begin after the contract was awarded on October 23, 2025.

PROCEDURAL HISTORY

Plaintiffs filed the action on August 21, 2025, and moved for a preliminary injunction on October 3, 2025. Defendants opposed the motion, and the court held a hearing on November 7, 2025. After ordering declarations concerning plaintiffs' ability to post security, the court granted the motion, enjoined ground or vegetation-disturbing activities authorized under Contract 3B until a merits decision, and required a \$1,000 bond.

DISPOSITION

other

CASES CITED

- Barnes v. U.S. Dep't of Transp., 655 F.3d 1124, 1131 (9th Cir. 2011)
- Earth Island Inst. v. U.S. Forest Serv., 351 F.3d 1291, 1300 (9th Cir. 2003)
- Cascadia Wildlands v. U.S. Bureau of Land Mgmt., 153 F.4th 869, 879-80 (9th Cir. 2025)
- Seven Cnty. Infrastructure Coal. v. Eagle Cnty., Colo., 605 U.S. 168, 177, 180 (2025)
- Ctr. for Biological Diversity v. United States Bureau of Land Mgmt., 141 F.4th 976, 993-94 (9th Cir. 2025)
- Audubon Soc'y of Portland v. Haaland, 40 F.4th 967, 980, 982 (9th Cir. 2022)

- Idaho Sporting Cong., Inc. v. Rittenhouse, 305 F.3d 957, 964 (9th Cir. 2002)
- Pac. Coast Fed'n of Fishermen's Ass'ns, Inc. v. Nat'l Marine Fisheries Serv., 265 F.3d 1028, 1034 (9th Cir. 2001)
- Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29, 43, 50, 57 (1983)
- Friends of Animals v. Haaland, 997 F.3d 1010, 1015 (9th Cir. 2021)
- Env't Def. Ctr. v. Bureau of Ocean Energy Mgmt., 36 F.4th 850, 877 (9th Cir. 2022)
- W. Watersheds Project v. Bureau of Land Mgmt., 971 F. Supp. 2d 957, 972 (E.D. Cal. 2013)
- WildEarth Guardians v. United States Dep't of Agric. Animal & Plant Health Inspection Serv. Wildlife Servs., 135 F.4th 717, 728 (9th Cir. 2025)
- Winter v. Natural Res. Def. Council, Inc., 555 U.S. 7, 20, 24 (2008)
- Starbucks Corp. v. McKinney, 602 U.S. 339, 345-46 (2024)
- Klein v. City of San Clemente, 584 F.3d 1196, 1201 (9th Cir. 2009)
- Where Do We Go Berkeley v. Cal. Dep't of Transp., 32 F.4th 852, 859 (9th Cir. 2022)
- All. for the Wild Rockies v. Cottrell, 632 F.3d 1127, 1131, 1134-35, 1138 (9th Cir. 2011)
- Flathead-Lolo-Bitterroot Citizen Task Force v. Mont., 98 F.4th 1180, 1190 (9th Cir. 2024)
- Republic of the Philippines v. Marcos, 862 F.2d 1355, 1362 (9th Cir. 1988)
- Nat'l Wildlife Fed'n v. Coston, 773 F.2d 1513, 1517 (9th Cir. 1985)
- Env't Democracy Project v. Green Sage Mgmt., LLC, No. 22-cv-03970-JST, 2022 WL 4596616, at *3 (N.D. Cal. Aug. 23, 2022)
- Sierra Club v. U.S. Forest Serv., 843 F.2d 1190, 1195 (9th Cir. 1988)
- Nat'l Wildlife Fed'n, 886 F.3d 803, 822 (9th Cir. 2018)
- Drakes Bay Oyster Co. v. Jewell, 747 F.3d 1073, 1092 (9th Cir. 2014)
- Nken v. Holder, 556 U.S. 418, 435 (2009)
- Amoco Prod. Co. v. Vill. of Gambell, 480 U.S. 531, 545 (1987)
- Bair v. California Dep't of Transp., No. 10-cv-04360-WHA, 2011 WL 2650896, at *8 (N.D. Cal. July 6, 2011)
- Johnson v. Couturier, 572 F.3d 1067, 1086 (9th Cir. 2009)
- Jorgensen v. Cassidy, 320 F.3d 906, 919 (9th Cir. 2003)
- People of State of Cal. ex rel. Van De Kamp v. Tahoe Reg'l Plan. Agency, 766 F.2d 1319, 1325 (9th Cir.), amended, 775 F.2d 998 (9th Cir. 1985)
- City of S. Pasadena v. Slater, 56 F. Supp. 2d 1106, 1148 (C.D. Cal. 1999)
- Landwatch v. Connaughton, 905 F. Supp. 2d 1192, 1198 (D. Or. 2012)
- Earth Island Inst. v. U.S. Forest Serv., 2006 WL 3359192, at *1, *4 (E.D. Cal. Nov. 20, 2006)
- Save Strawberry Canyon v. Dep't of Energy, 613 F. Supp. 2d 1177, 1191 (N.D. Cal. 2009), adhered to, No. 08-cv-03494-WHA, 2009 WL 1098888 (N.D. Cal. Apr. 22, 2009)

OPINION

American River Trees, et al. v. Central Valley Protection Board, et al.

PER CURIAM.

1 2 3 4 5 6 7

8 UNITED STATES DISTRICT COURT

9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10 11 AMERICAN RIVER TREES, et al., No. 2:25-cv-02384-DC-CSK 12 Plaintiffs,

13 v. ORDER GRANTING PLAINTIFFS' MOTION

FOR PRELIMINARY INJUNCTION

14 CENTRAL VALLEY PROTECTION

BOARD, et al., (Doc. No. 19) 15 Defendants. 16 17 This matter came before the court on November 7, 2025, for a hearing on Plaintiffs' 18 motion for preliminary injunction. (Doc. Nos. 19; 36.) Attorney Patrick Soluri appeared on behalf 19 of Plaintiff American River Trees and Plaintiff Save the American River Association, and 20 Attorneys Justin Augustine and Meredith Stevenson appeared on behalf of Plaintiff Center for 21 Biological Diversity. Attorneys Devon McCune and Daniel Luecke appeared on behalf of 22 Defendant U.S. Army Corps of Engineers ("USACE") and Defendant U.S. National Parks 23 Service ("NPS"). Attorneys Matthew Struhar and Isabella Panicucci appeared on behalf of 24 Defendant Central Valley Flood Protection Board ("Flood Board"). For the reasons explained 25 below, Plaintiffs' motion for preliminary injunction will be granted.

26 BACKGROUND

27 This action arises from the federal and California state government approval and 28 implementation of the American River Common Features 2016 Flood Risk Management Project 1 (the "Project"). (Doc. No. 19-1 at 6.) The Project is a flood risk management effort to "address[] 2 flood protection measures on the Sacramento River, Natomas East Main Drainage Canal, Arcade 3 Creek, Magpie Creek, Sacramento Weir and Bypass, and Lower American River." (Doc. No. 19- 4 1 at 6.) Plaintiffs in this action challenge the review and approval of Contracts 3B North and 5 South ("Contract 3B") and 4B1 of the Project. (Id.) These Contracts will impact approximately 6 3.3 miles of mature riparian forest located on the American River Parkway, a greenbelt that 7 extends twenty-nine (29) miles from Folsom Dam in Folsom, California to the American River's 8 confluence with the Sacramento River in Sacramento, California. (Doc. No. 1 at ¶¶ 9–10.)

9 Contract 3B will primarily affect the banks of the Lower American River between Howe Avenue 10 and Harrington Way on the north side, and between Watt Avenue and the Mayhew Drain on the 11 south side, in Sacramento, California. (Id. at ¶ 10.) Contract 3B authorizes the removal of 675– 12 715 trees and the trimming of over 1,100 trees in the Contract area, to clear the area for the 13 installation of "riprap," an erosion protection measure that involves replacing natural vegetation 14 with boulder-sized rocks. (Id. at ¶¶ 10, 30, 34.) 15 A. Statutory Background 16 Congress passed the National Environmental Procedure Act of 1969 ("NEPA") "to protect 17 the environment by requiring federal agencies [to] carefully weigh environmental considerations 18 and consider

potential alternatives to the proposed action before the government launches any 19 major federal action.” *Barnes v. U.S. Dep’t of Transp.*, 655 F.3d 1124, 1131 (9th Cir. 2011) 20 (citation omitted). To accomplish this purpose, “NEPA imposes procedural requirements 21 designed to force agencies to take a ‘hard look’ at environmental consequences.” *Id.* (quoting 22 *Earth Island Inst. v. U.S. Forest Serv.*, 351 F.3d 1291, 1300 (9th Cir. 2003)). “When ‘properly 23 applied, NEPA helps agencies to make better decisions and to ensure good project management.’” 24 *Cascadia Wildlands v. U. S. Bureau of Land Mgmt.*, 153 F.4th 869, 879 (9th Cir. 2025) (quoting 25 *Seven Cnty. Infrastructure Coal. v. Eagle Cnty., Colo.*, 605 U.S. 168, 177 (2025)). However, 26 27 1 Plaintiffs’ motion for preliminary injunction seeks to enjoin activity under Contract 3B only, as the implementation of Contract 4B is not imminent. (Doc. No. 19-1 at 6 n.1.) 28 1 NEPA is a purely procedural statute that does not impose any substantive environmental 2 obligations nor require that agencies reach a particular environmental outcome. *Cascadia 3 Wildlands*, 153 F.4th at 879–80 (citation omitted). 4 Among NEPA’s procedural mandates is the requirement that prior to undertaking “major 5 Federal actions significantly affecting the quality of the human environment,” federal agencies 6 must prepare an Environmental Impact Statement (“EIS”). *Barnes*, 655 F.3d at 1131 (quoting 42 7 U.S.C. § 4332(2)(C)). An EIS must include: 8 (i) reasonably foreseeable environmental effects of the proposed agency action; 9 (ii) any reasonably foreseeable adverse environmental effects which 10 cannot be avoided should the proposal be implemented; 11 (iii) a reasonable range of alternatives to the proposed agency action, including an analysis of any negative environmental impacts of not 12 implementing the proposed agency action in the case of a no action alternative, that are technically and economically feasible, and meet 13 the purpose and need of the proposal; 14 (iv) the relationship between local short-term uses of man’s environment and the maintenance and enhancement of long-term 15 productivity; and 16 (v) any irreversible and irretrievable commitments of Federal resources which would be involved in the proposed agency action 17 should it be implemented. 18 42 U.S.C. § 4332(C). “The alternatives analysis ‘requires disclosure of environmental impacts of 19 the proposed action and its alternatives, including their direct, indirect, and cumulative effects.’” 20 *Ctr. for Biological Diversity v. United States Bureau of Land Mgmt.*, 141 F.4th 976, 993 (9th Cir. 21 2025) (quoting *Audubon Soc’y of Portland v. Haaland*, 40 F.4th 967, 980 (9th Cir. 2022)). The 22 “touchstone” of the court’s review of an EIS “is whether an EIS’s selection and discussion of 23 alternatives fosters informed decision-making and informed public participation.” *Ctr. for 24 Biological Diversity*, 141 F.4th at 993 (quoting *Audubon Soc’y of Portland*, 40 F.4th at 982) 25 (citation omitted)). 26 // 27 // 28 // 1 B. Factual Background

2 In 1962, Congress passed the Flood Control Act of 1962, which gave Defendant USACE

3 the authority to study flood risk needs in the American River basin. (Doc. No. 20-9 at 54 (citing 4 Pub. L. No. 87-874, 76 Stat. 1173)). After the 1986 flooding in Sacramento, Congress instructed 5 Defendant USACE to “investigate additional means to reduce flood risk in the city of 6 Sacramento.” (*Id.*) Based on Defendant USACE’s analysis, Congress authorized the American 7

River Common Features (“ARCF”) Project under the Water Resources Development Act of 1996 8 (“WRDA”). (Id. (citing Pub. L. No. 104-303, § 101(a)(1), (1996))). Development of the ARCF 9 Project revealed that additional levee improvements were needed on the American River and 10 Sacramento River downstream of the confluence with the American River to address levee 11 erosion issues, among other issues. (Id.)

12 In 2016, Defendant USACE completed the ARCF General Reevaluation Report and its
13 accompanying Environmental Impact Statement/Environmental Impact Report (the “2016 14
FEIS/FEIR”). (Doc. No. 20-4 at 4.) The 2016 FEIS/FEIR analyzed several alternatives to address
15 flooding concerns on the lower American and Sacramento Rivers. (Doc. No. 20-9 at 55.) The
16 2016 FEIS/FEIR analyzed two alternatives in detail in addition to a No Action Alternative: (1)
17 improve levees and (2) improve levees and widen the Sacramento Weir and Bypass. (Id.) 18
Defendant USACE ultimately recommended the second alternative in the 2016 FEIS/FEIR. (Id.)
19 In response to the 2016 FEIS/FEIR and the Chief of Engineers’ Report to Congress, Congress
20 approved of the ARCF Project, which authorized Defendant USACE to construct and improve
21 levees in the Sacramento area. (Id. (citing 2016 Water Resources Development Act, Pub. L. No.
22 114-322, 130 Stat. 1628, § 1401(2)(7)). 23 Also in response to the 2016 FEIS/FEIR, various
federal, state, and local agencies and 24 interest groups, including Plaintiff Save the American
River Association, submitted comments to 25 Defendant USACE. (Doc. No. 20-5 at 3.) These
comments generally focused on concerns over 26 (1) access to recreational features during and
after construction; (2) placement and justification 27 2 The factual background is derived from
Plaintiffs’ complaint, motion for preliminary injunction, 28 and the exhibits attached thereto. (Doc.
Nos. 1, 19, 20-1–20-23.) 1 for rock erosion protection along the American and Sacramento Rivers;
(3) effects to vegetation 2 because of the recommended alternative; and (4) future stakeholder
coordination. (Id. at 2.) In its 3 responses to submitted comments, Defendant USACE repeatedly
represented that if “some sort of 4 bank protection is determined to be necessary, other options to
reduce impacts, including 5 bioengineering³ measures, will be analyzed.” (Id. at 54, 56, 58, 60,
62, 64, 66, 68, 70, 72, 74, 76, 6 78, 80, 82, 84, 86.) 7 Following Congressional approval of the
ARCF Project in 2016, Defendant USACE 8 “began detailed design for these erosion protection
and levee improvements in the Sacramento 9 Metropolitan area.” (Doc. No. 20-9 at 69.) Defendant
USACE noted that “[p]rojects were 10 prioritized based upon their constructability and sequenced
to provide flood risk reduction 11 benefits to communities with highest life safety risk and most
costly flood-related damages.” (Id.) 12 Several of the projects authorized as part of the ARCF
Project are currently underway. (Id.) 13 Of particular importance to this action is the eleven (11)
miles of erosion protection work 14 along the American River, levee erosion and stability, and
seepage improvements along portions 15 of the American and Sacramento Rivers approved under
the ARCF Project and discussed in the 16 2016 Supplemental Environmental Impact
Statement/Subsequent Environmental Impact Report 17 (“SEIS/SEIR”). (Id. at 70.) In 2019,
Defendant USACE “held an expert opinion elicitation 18 (“EOE”) . . . to refine the design of the

project.” (Id.) As a result of the EOE, “designs along the 19 American River were refined to incorporate alternative erosion protection measures to minimize 20 impacts to heritage oaks, riparian habitat, and to create higher-quality onsite mitigation.” (Id.) 21 Defendant USACE analyzed these refined designs “as part of the Proposed Action” in the draft 22 SEIS/SEIR (“2023 Draft SEIS/SEIR”) and later, in the final SEIS/SEIR (“2025 Final 23 SEIS/SEIR”) as American River Erosion Contract 3B North and South and 4B. (Id.) 24 In December 2023, Defendant USACE issued the 2023 Draft SEIS/SEIR pursuant to 25 NEPA and the California Environmental Quality Act (“CEQA”), the California state law 26 27 3 As defined by Defendant USACE, bioengineering in the erosion protection context is a method that “uses plant material and minimal amounts of rock to stabilize the eroded slope and prevent 28 further loss of material.” (Doc. No. 20-1 at 152.) 1 corollary to NEPA. (Doc. No. 20-7). The 2023 Draft SEIS/SEIR included a project-level, site 2 specific analysis of Contract 3B’s impacts. (Doc. No. 1 at ¶ 24.) It also included a discussion of 3 alternatives that were considered but ultimately rejected from detailed analysis as to American 4 River Erosion Contract 3B North and South specifically. (Doc. No. 20-7 at 64.) Defendant 5 USACE indicated that three alternatives were considered as to Contract 3B North but ultimately 6 rejected due to not meeting environmental or flood risk reduction needs. (Id.) Likewise, 7 Defendant USACE considered but ultimately rejected one alternative as to Contract 3B South but 8 dismissed it due to its additional environmental impacts. (Id.) Importantly, none of the 9 alternatives identified in the 2023 Draft SEIS/SEIR were a bioengineering alternative. 10 The 2023 Draft SEIS/SEIR identified three alternatives that were analyzed with respect to 11 Contract 3B. The alternatives were the (1) No Action Alternative, (2) Proposed Action, and (3) 12 No Project Alternative. (Doc. No. 20-7 at 5–6.) The No Action Alternative is the authorized 13 project that was described in the 2016 FEIS/FEIR, which “includes 11 miles of launchable trench 14 and bank protection to be constructed on the Lower American River.” (Id. at 71.) This alternative 15 included an analysis of launchable trench and bank protection as erosion protection methods. (Id. 16 at 84.) Under the Proposed Action, Contract 3B North “would include constructing approximately 17 1.8 miles of launchable rock toe, launchable trench, and bank protection,” while Contract 3B 18 South “would include constructing approximately 1.5 miles of launchable rock toe [], launchable 19 trench, bank protection, and tie backs.” (Id. at 85.) The No Project Alternative discussed the 20 baseline conditions as they existed in January 2023, which did “not include additional 21 improvements beyond those already constructed and would result in a continued risk to 22 catastrophic flooding.” (Id. at 165.) Defendant USACE noted that under the No Project 23 Alternative, the “existing system would continue to require risk reduction measures to meet 24 current levee design criteria,” and the “risk to human health and safety, property, the 25 environment” due to flooding would remain high. (Id. at 165–66.) 26 Following the issuance of the 2023 Draft SEIS/SEIR, a public comment period was 27 conducted from December 2023 to February 2024, during which approximately one thousand 28 categorized comments were submitted by federal and state agencies, local agencies, interest 1 groups, and approximately 900

individuals. (Doc. No. 20-9 at 21.) Additional comments were 2 also submitted during the 15-month period leading up to Defendant USACE's issuance of the 3 2025 Final SEIS/SEIR. (Doc. No. 1 at ¶ 27.) The majority of commentors expressed concern over 4 riparian habitat and tree removal impacts related to Contract 3B. (Doc. No. 20-9 at 21.) 5 In May 2025, Defendant USACE issued the 2025 Final SEIS/SEIR. (Id. at 2.) The 2025 6 Final SEIS/SEIR contemplated the same three alternatives as to Contract 3B as the 2023 Draft 7 SEIS/SEIR: the (1) No Action Alternative; (2) Proposed Action; and (3) No Project Alternative. 8 (Id. at 78–125, 192–93.) Also issued by Defendant USACE were Appendix I to the 2025 Final 9 SEIS/SEIR, which included comments and responses to the 2023 Draft SEIS/SEIR, and 10 Appendix G to the 2025 Final SEIS/SEIR, which was released in January 2025, and provided a 11 summary of engineering analyses and design efforts as to the planned erosion protection along the 12 Lower American River and Sacramento River. (Doc. No. 20-10; Doc. No. 23 at 28; Doc. No. 48- 13 1.) 14 On June 18, 2025, Defendant USACE issued its record of decision ("ROD"), approving

15 Contracts 3B and 4B and adopting the 2025 Final SEIS/SEIR pursuant to NEPA. (Doc. No. 20-16 14.) On July 18, 2025, Defendant Flood Board certified the 2025 Final SEIS/SEIR pursuant to 17 CEQA. (Doc. No. 20-15.) Defendant Flood Board issued its notice of determination on July 18, 18 2025. (Doc. No. 20-15 at 2.) 19 As discussed, of particular concern to Plaintiffs in this action is the imminent 20 implementation of Contract 3B. The erosion control measures proposed in Contract 3B 21 necessitate the "removal of mature riparian forest to allow for the installation of rip-rap," which is 22 then left exposed or buried in soil. (Doc. No. 19-1 at 7; 20-9 at 91–92.) Contract 3B also 23 authorizes the removal of at least 675 trees in the Contract area, some of which are heritage trees. 24 (Doc. No. 20-9 at 109, 117.) Heritage trees are "California oak tree[s] growing on any land in 25 Sacramento County . . . with a trunk sixty inches or greater in girth measured four and one-half 26 feet above the ground." (Doc. No. 20-19 at 3.) Plaintiffs assert that at least thirty-seven (37) 27 heritage trees in the Contract 3B area are not protected. (Id.) Plaintiffs further aver that more than 28 1,100 trees are marked for trimming. (Doc. No. 19-1 at 7; 20-19 at 52–70.) Though the 2025 1 Final SEIS/SEIR does not disclose how many heritage trees will be removed or harmed by

2 Contract 3B, Plaintiffs obtained this information via a record request to the Sacramento Area 3 Flood Control Agency, a non-federal local sponsor of the Project. (Doc. No. 1 at ¶ 39; Doc. No. 4 20-19 at 3 n.1.) This data is limited to determinations by Defendant USACE as to which trees 5 were "protected" or "not protected," and each marked tree's species, size, and location. (Doc. No. 6 1 at ¶ 40.) 7 Defendant USACE awarded the 3B Contract on October 23, 2025. (Doc. No. 30 at 2.) 8 Vegetation clearing under the 3B Contract is not set to begin before November 30, 2025. (Id. at 9 3.) 10 C. Procedural Background 11 On August 21, 2025, Plaintiffs filed a complaint alleging four claims against Defendants: 12 (1) violation of the Wild and Scenic Rivers Act, 16 U.S.C. §§ 1271 et seq. against Defendants 13 USACE and NPS; (2) violation of California Wild and Scenic Rivers Act, California Public 14 Resources Code, §§ 5093.50 et seq. against Defendant Flood

Board; (3) violation of NEPA, 42 U.S.C. §§ 4321, et seq. against Defendant USACE; and (4) violation of CEQA, California Public Resources Code, §§ 21000 et seq. against Defendant Flood Board. (Doc. No. 1 at ¶¶ 73–123.) 17 On October 3, 2025, Plaintiffs filed a motion for preliminary injunction based on the 18 impending implementation of Contract 3B. (Doc. No. 19-1 at 6.) Plaintiffs seek to enjoin “ground 19 or vegetation disturbing activities” such as site preparation, vegetation removal, and tree felling in 20 the 3B Contract area. (Doc. No. 19-2 at 2.) On October 17, 2025, Defendants USACE and NPS 21 filed an opposition to Plaintiffs’ motion for preliminary injunction.⁴ (Doc. No. 23.) Also on 22 October 17, 2025, Defendant Flood Board filed an opposition to Plaintiffs’ motion for 23 preliminary injunction. (Doc. No. 25.) On October 27, 2025, Plaintiffs filed their replies thereto. 24 (Doc. Nos. 31, 32.) At the hearing, the court ordered Plaintiffs to file declarations regarding their 25 ability to post a bond in the event the court granted the preliminary injunction, and Plaintiffs did 26 27 4 Federal Defendants also filed a post hoc motion for additional pages for their opposition brief. (Doc. No. 34.) Though the court finds a sufficient basis to grant the motion, the court expects the 28 parties to strictly comply with the court’s Standing Order in future filings. 1 so on November 12, 2025. (Doc. Nos. 38, 39, 40.) On November 14, 2025, Federal Defendants 2 filed a response thereto. (Doc. No. 44.)

3 LEGAL STANDARD

4 “A preliminary injunction is an ‘extraordinary’ equitable remedy that is ‘never awarded as 5 of right.’” *Starbucks Corp. v. McKinney*, 602 U.S. 339, 345–46 (2024) (quoting *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008)). To obtain a preliminary injunction, a plaintiff 7 must show: (1) a likelihood of success on the merits; (2) a likelihood of irreparable harm in the 8 absence of preliminary relief; (3) that the balance of equities tips in their favor; and (4) that an 9 injunction is in the public interest. *Winter*, 555 U.S. at 20. A plaintiff seeking a preliminary 10 injunction bears the burden of proving these elements. *Klein v. City of San Clemente*, 584 F.3d 11 1196, 1201 (9th Cir. 2009). 12 The Ninth Circuit has adopted a “‘sliding scale test,’ which allows a strong showing on 13 the balance of hardships to compensate for a lesser showing of likelihood of success.” *Where Do 14 We Go Berkeley v. Cal. Dep’t of Transp.*, 32 F.4th 852, 859 (9th Cir. 2022) (quoting *All. for the 15 Wild Rockies v. Cottrell*, 632 F.3d 1127, 1134–35 (9th Cir. 2011)). “[W]hen plaintiffs establish 16 that the balance of hardships tips sharply in their favor, there is a likelihood of irreparable injury, 17 and the injunction is in the public interest, they need only show ‘serious questions’ on the merits.” 18 *Id.* (quoting *All. For the Wild Rockies*, 632 F.3d at 1135). “[T]he serious questions standard is ‘a 19 lesser showing than likelihood of success on the merits.’” *Flathead-Lolo-Bitterroot Citizen Task 20 Force v. Mont.*, 98 F.4th 1180, 1190 (9th Cir. 2024) (quoting *All. for the Wild Rockies v. Pena*, 21 865 F.3d 1211, 1217 (9th Cir. 2017)). “Serious questions are ‘substantial, difficult and doubtful, 22 as to make them a fair ground for litigation and thus for more deliberative investigation.’” 23 *Republic of the Philippines v. Marcos*, 862 F.2d 1355, 1362 (9th Cir. 1988) (quoting *Hamilton 24 Watch Co. v. Benrus Watch Co.*, 206

F.3d 738, 740 (2d Cir. 1952)). Although “[s]erious 25 questions need not promise a certainty of success, nor even present a probability of success, 26 [they] must involve a ‘fair chance of success on the merits.’” Id. (quoting Nat’l Wildlife Fed’n v. 27 Coston, 773 F.2d 1513, 1517 (9th Cir. 1985)). 28 /////

1 ANALYSIS

2 A. Winter Factors 3 Plaintiffs seek a preliminary injunction to enjoin ground or vegetation disturbing activities 4 including site preparation, vegetation removal, and tree felling in the Contract 3B area to preserve 5 the status quo before the court reaches a decision on the merits. (Doc. No. 19-2 at 2.) Plaintiffs 6 contend a preliminary injunction is warranted because they have demonstrated (1) a likelihood of 7 success, or at least serious questions, on the merits of all four of their claims, (2) an injunction is 8 necessary to avoid irreparable harm to the “mature riparian forest” in the Contract 3B area and to 9 Plaintiffs themselves, (3) the balance of the equities weighs in favor of Plaintiffs, and (4) an 10 injunction is in the public interest. (Doc. No. 19-1 at 20–32.) The court begins by addressing 11 serious questions on the merits, before turning to the other Winter factors. 12 1. Serious Questions on the Merits 13 The Administrative Procedure Act (“APA”) governs the court’s review of agency 14 decisions under NEPA. Idaho Sporting Cong., Inc. v. Rittenhouse, 305 F.3d 957, 964 (9th Cir. 15 2002)(citing 5 U.S.C. § 706). Pursuant to the APA, “[t]he reviewing court shall . . . hold unlawful 16 and set aside agency action, findings, and conclusions found to be arbitrary, capricious, an abuse 17 of discretion, or otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A). An agency action 18 is arbitrary and capricious if the agency has: 19 relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered 20 an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed 21 to a difference in view or the product of agency expertise. 22 Pac. Coast Fed’n of Fishermen’s Ass’ns, Inc. v. Nat’l Marine Fisheries Serv., 265 F.3d 1028, 23 1034 (9th Cir. 2001) (quoting Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins. Co., 463 24 U.S. 29, 43 (1983)). 25 “Under the arbitrary and capricious standard, the scope of review is deferential and 26 narrow, and the court is not to substitute its judgment for the agency’s judgment.” Friends of 27 Animals v. Haaland, 997 F.3d 1010, 1015 (9th Cir. 2021) (citation omitted). “Nevertheless, the 28 agency must examine the relevant data and articulate a satisfactory explanation for its action 1 including a rational connection between the facts found and the choice made.” State Farm, 463 2 U.S. at 43 (internal quotation marks and citation omitted). A court may not accept an agency’s 3 post hoc rationalizations for its action. Id. at 50. “It is well-established that an agency’s action 4 must be upheld, if at all, on the basis articulated by the agency itself.” Id. (citation omitted). 5 As discussed in the statutory background, NEPA is a procedural statute “that requires the 6 federal government to ‘take a hard look at the environmental consequences’ before acting.” Ctr. 7 for Biological Diversity, 141 F.4th at 993 (quoting N. Alaska Env’t Ctr. v. Kempthorne, 457 F.3d 8 969, 976 (9th Cir. 2006) (citation omitted)). “NEPA does not mandate particular results” Id. 9 NEPA

requires a federal agency to “consider every significant aspect of the environmental impact 10 of a proposed action.” Id. (citation omitted). It also ensures that the federal agency “inform[s] the 11 public that it has indeed considered environmental concerns in its decisionmaking process.” Id. 12 (citation omitted). 13 NEPA requires “preparation of an EIS when a ‘major’ federal action would ‘significantly 14 affect[] the quality of the human environment.’” Id. (quoting 42 U.S.C. § 4332(2) (C)). NEPA also 15 mandates that federal agencies “use the EIS to analyze a reasonable range of alternatives to the 16 proposed action.” Id. (citing 42 U.S.C. §§ 4332(2)(C)(iii), (F), (H)). When analyzing alternatives, 17 a federal agency must disclose the “environmental impacts of the proposed action and its 18 alternatives, including their direct, indirect, and cumulative effects.” Id. (quoting Audubon Soc’y 19 of Portland, 40 F.4th at 980). However, a federal agency only needs to “briefly discuss the 20 reasons” why certain alternatives “were eliminated from detailed study.” Id. (quoting 40 C.F.R. § 21 1502.14(a)). “In reviewing the adequacy of an EIS under NEPA, we employ a rule of reason 22 analysis to determine whether the discussion of the environmental consequences included in the 23 EIS is sufficiently thorough.” Audubon Soc’y of Portland, 40 F.4th at 967 (internal quotation 24 marks and citation omitted). This rule of reason analysis “guides both the choice of alternatives as 25 well as the extent to which the EIS must discuss each alternative.” Id. (citation omitted). 26 Plaintiffs argue Defendant USACE failed to comply with NEPA due to its failure to 27 adequately consider alternatives to the approved Project, and more specifically, Contract 3B. 28 (Doc. No. 19-1 at 17.) Plaintiffs contend that Defendant USACE’s limited assessment of the “no- 1 project” alternative and preferred alternative for Contract 3B lacks “range” and “reversed course 2 on [Defendant USACE’s] prior commitment to consider bioengineering as a feasible alternative.” 3 (Id.) Plaintiffs aver that Defendant USACE’s “rejection of a bioengineering alternative represents 4 a dramatic reversal from its prior stance.” (Id. at 18.) Plaintiffs conclude that Defendant USACE’s 5 alternatives analysis under NEPA and final adoption of the ROD and 2025 Final SEIS/SEIR is 6 therefore arbitrary and capricious in violation of the APA. (Id.) 7 Federal Defendants argue in opposition that their NEPA analysis “provided a full and fair 8 discussion of significant environmental impacts of the proposed actions and its alternatives.” 9 (Doc. No. 23 at 25.) Federal Defendants aver that their consideration of three alternatives, the No 10 Action Alternative (constructing eleven (11) miles of launchable trench and bank protection to be 11 constructed on the Lower American River), (2) the No Project Alternative (no additional 12 improvements); and (3) the Proposed Action (constructing approximately 3.3 miles of launchable 13 rock toe, launchable trench, bank protection, and tie backs on the Contract 3B site) was 14 reasonable because “the erosion protection alternatives were responsive to design refinements 15 needed to meet the Project’s authorized flood risk reduction performance objectives.” (Id. at 27.) 16 Further, Federal Defendants argue they should be granted deference with respect to the 17 alternatives they deem feasible to meet the Project’s purpose. (Id.) Finally, Federal Defendants 18 argue that Plaintiffs “advocate for a bioengineering alternative that uses only plant-based 19 materials,” as opposed to bioengineering techniques that use vegetation and a

combination of 20 other materials, such as rock or cobble. (Id.) 21 The court agrees with Plaintiffs that Defendants represented that certain bioengineering 22 methods met the objective criteria of the Project, and that Defendants themselves represented that 23 bioengineering methods would be considered specifically with respect to erosion control 24 measures along the Lower American River. For example, the 2015 Final Report for the American 25 River Watershed Common Features General Reevaluation Report (“2015 GRR”) indicates that 26 erosion protection measures for the American River would include placing rock protection on the 27 bank to prevent erosion, constructing a launchable rock filled trench, and that “a bioengineering 28 method, which uses plant material and minimal amounts of rock to stabilize the eroded slope and 1 prevent further loss of material” “would be used in lower velocity reaches.” (Doc. No. 20-2 at 2 145–46.) Bioengineering armoring of slopes is also listed as one of the “Measures to Address 3 Erosion” in the 2015 GRR. (Id. at 123.) The 2015 GRR indicates that bioengineering armoring of 4 slopes as a measure to address erosion was screened and met the objective criteria for reduction 5 of the risk of flooding within the study area and to critical infrastructure within the study area. (Id. 6 at 126.) Defendant USACE also identified the bioengineering armoring of slopes as one of the 7 “retained” management measures that would be further analyzed. (Id. at 128–30.) Defendant 8 USACE ultimately determined it should be carried into the “final array of alternatives” for 9 erosion protection measures. (Id. at 144–46) 10 Further, Defendant USACE repeatedly represented that bioengineering methods would be 11 considered where bank protection measures were deemed necessary along the Lower American 12 River. Defendant USACE stated as such at least seventeen times in their 2016 responses to public 13 comments on the 2016 FEIS/FEIR. (Doc. No. 20-5 at 54, 56, 58, 60, 62, 64, 66, 68, 70, 72, 74, 14 76, 78, 80, 82, 84, 86.) Defendant USACE indicated in their responses to submitted comments 15 that future analyses would examine whether, for any particular site, “some sort of bank protection 16 is determined to be necessary,” and if so, that “other options to reduce impacts, including 17 bioengineering measures, will be analyzed.” Id. 18 Despite Defendant USACE’s representations to the contrary, a bioengineering alternative 19 was not analyzed in the 2023 Draft SEIS/SEIR. (See Doc. No. 20-7.) Not only was a 20 bioengineering alternative not formally analyzed, it was also not identified as one of the four 21 alternatives that were considered for Contract 3B but ultimately rejected from more detailed 22 analysis because they did not meet environmental or flood risk reduction needs. (Id. at 64.) 23 After the issuance of the 2023 Draft SEIS/SEIR, federal, state, and local agencies, interest 24 groups, and individuals submitted approximately one thousand comments in response to the draft. 25 The majority of commentors expressed concern over riparian habitat and tree removal impacts 26 related to Contract 3B. (Doc. No. 20-9 at 21.) Plaintiff Center for Biological Diversity submitted 27 comments that identified many issues it had with the 2023 Draft SEIS/SEIR, including that 28 bioengineering measures were not analyzed as previously represented by Defendant USACE. 1 (Doc. No. 20-13 at 22.) The Bureau of Land Management also recommended incorporation of 2 Defendant NPS’ best management practices relative to

alternative, bioengineered approaches to 3 bank protection and site restoration into the Lower American River project designs where 4 possible, and that a team should be established to “reevaluate diagnostic and treatment methods 5 for erosion control with modern tools including Nature-based solutions.” (Doc. No. 20-11 at 4, 6 34.) The Bureau of Land Management opined that that further analysis should include a “robust 7 exploration of NEPA [a]lternatives” as opposed to the “uniform approach to mitigation erosion 8 across many different types of river stretches.” (Id. at 18.) Further, the Regional Parks 9 Department of the County of Sacramento opined that a “reasonable range of alternatives has not 10 been considered for Contract 3B North, 3B South . . . and that “there needs to be an alternative or 11 two that addresses the issues holistically” such as a “holistic engineering solution” that “reduce[s] 12 impacts to trees, wildlife, and recreation.” (Doc. No. 20-12 at 35–36.) 13 In Appendix I to the 2025 Final SEIS/SEIR, Defendant USACE responded to comments 14 submitted in response to the 2023 Draft SEIS/SEIR, as they were required to do. (Doc. No. 20- 15 10.) Defendant USACE confirmed that “[t]he GRR’s final alternative measures carried forward 16 into the design development following authorization of the ARCF16 Project in 2016” included 17 “bank protection, launchable rock trenches, and bioengineering solutions.” (Id. at 317.) 18 Defendant USACE stated in Appendix I that tree and vegetation alone would not be able to 19 provide the resiliency necessary to achieve the erosion protection sufficient for flood mitigation. 20 (Id. at 22.) Defendant USACE also cited concerns about fire destroying bioengineering erosion 21 protection measures and the “longevity of bioengineering solutions and the impacts repair and 22 replacement of these solutions would have on the on-site mitigation plants and habitat.” (Id. at 23 317.) Defendant USACE further opined that bioengineering “will not reduce all of the flood 24 risks” at the American River Erosion Contract 3B site. (Id. at 30.) 25 “[A]n agency changing its course must supply a reasoned analysis.” Ctr. for Biological 26 Diversity, 141 F.4th at 994 (State Farm, 463 U.S. at 57 (citation omitted)). While agencies are not 27 required to “consider infinite, unfeasible, or impractical alternatives, but they must consider 28 reasonable ones.” Env’t Def. Ctr. v. Bureau of Ocean Energy Mgmt., 36 F.4th 850, 877 (9th Cir. 1 2022). “The existence of a viable but unexamined alternative renders the environmental review 2 conducted under NEPA inadequate.” Id. (citation omitted). The “touchstone” of the court’s 3 review of an EIS “is whether an EIS’s selection and discussion of alternatives fosters informed 4 decision-making and informed public participation.” Ctr. for Biological Diversity, 141 F.4th at 5 993 (quoting Westlands Water Dist. v. U.S. Dep’t of Interior, 376 F.3d 853, 868 (9th Cir. 2004) 6 (citation omitted)). 7 Defendant USACE itself recognized that bioengineering was one of the final alternative 8 measures that was carried over and considered as part of the site-specific design development 9 phase following the issuance of the 2016 FEIS/FEIR. (Doc. 20-10 at 317.) Further, at multiple 10 stages of the Project’s development, including in response to public comments and in the 2015 11 GRR, Defendant USACE represented that bioengineering methods would be considered as one of 12 the alternatives for erosion protection methods and that bioengineering armoring of slopes as a 13

measure to address erosion was screened and met the objective criteria for reduction of the risk of 14 flooding within the study area and to critical infrastructure within the study area. (Doc. Nos. 20-2 15 at 123, 126; 20-5 at 54, 56, 58, 60, 62, 64, 66, 68, 70, 72, 74, 76, 78, 80, 82, 84, 86.) Despite this 16 representation, the 2023 Draft SEIS/SEIR does not discuss the bioengineering armoring of slopes 17 as either a reasonable alternative or an alternative that was eliminated from further study. Ctr. for 18 Biological Diversity, 141 F.4th 976, 993 (9th Cir. 2025) (citing 43 C.F.R. § 1502.14(a); 42 U.S.C. 19 § 4332(2)(C) (NEPA requires agencies to analyze a reasonable range of alternatives in the EIS 20 and “for alternatives which were eliminated from detailed study,” to “briefly discuss reasons their 21 having been eliminated.”)). Indeed, bioengineering as an erosion protection measure alternative is 22 not discussed again in the record until Defendant USACE released Appendix I and Appendix G. 23 (Doc. No. 10; 23 at 21; 48-1 at 22–23.) Importantly, these documents were issued after the 24 comment period for the 2023 Draft SEIS/SEIR had ended on February 23, 2024. (Doc. No. 20-9 25 at 3.) The court is particularly concerned that Defendant USACE omitted bioengineering erosion 26 protection measures in the 2023 SEIS/SEIR as at least an alternative that was “eliminated from 27 detailed study,” undermining the opportunity for “informed public participation” during the 28 public review and comment period. Ctr. for Biological Diversity, 141 F.4th at 993; see also 1 WildEarth Guardians v. United States Dep’t of Agric. Animal & Plant Health Inspection Serv. 2 Wildlife Servs., 135 F.4th 717, 728 (9th Cir. 2025) (noting that a “NEPA document is an 3 important springboard for public comment and engagement,” and that “[f]ollowing NEPA’s 4 procedural requirements ensures” that the public will be informed). 5 Unlike instances where a plaintiff proposes an alternative in public comment that the 6 agency ultimately deems unreasonable, here, Defendant USACE itself found on the record that 7 bioengineering armoring of slopes as an erosion protection measure alternative met the Project 8 objective criteria of reduction of both flood risk and damage to critical infrastructure and 9 represented to the public that it would be analyzed. Cf. W. Watersheds Project v. Bureau of Land 10 Mgmt., 971 F. Supp. 2d 957, 972 (E.D. Cal. 2013) (finding the agency’s brief explanation in the 11 final environmental assessment as to why plaintiff’s proposed alternative was not examined in 12 depth sufficient to satisfy the agency’s obligation to provide a reasonable explanation under 13 NEPA). Defendant USACE may have revised its position as to the feasibility of the 14 bioengineering armoring of slopes as an erosion protection measure alternative, but the agency 15 did not provide an explanation until after the public comment period had ended, effectively 16 preventing the public from reviewing and commenting on the agency’s change of course. Though 17 the court is aware of its mandate to “afford substantial deference to [Defendant USACE],” Seven 18 Cnty. Infrastructure Coal, 605 U.S. at 180, in its selection and elimination of alternatives, 19 Defendant USACE must also uphold its obligation pursuant to NEPA to analyze a reasonable 20 range of alternatives and to briefly discuss why certain alternatives were eliminated from further 21 study. Ctr. for Biological Diversity, 141 F.4th at 993 (citations omitted). 22 Accordingly, Plaintiffs have demonstrated at least a serious question on the merits as to 23

whether Defendant USACE considered a reasonable range of alternatives as required by NEPA 24 and whether Defendant USACE's adoption of the ROD and 2025 Final SEIS/SEIR was arbitrary 25 or capricious in violation of the APA. 26 2. Irreparable Harm 27 The court now turns to whether Plaintiffs have demonstrated they are likely to suffer 28 irreparable harm in the absence of the court granting the requested preliminary injunctive relief. 1 To obtain a preliminary injunction, Plaintiffs must show that the risk of irreparable harm is 2 "likely, not just possible." All. for the Wild Rockies, 632 F.3d at 1131. "Environmental injury, by 3 its nature, can seldom be adequately remedied by money damages and is often permanent or at 4 least of long duration, i.e., irreparable." *Env't Democracy Project v. Green Sage Mgmt., LLC*, No. 5 22-cv-03970-JST, 2022 WL 4596616, at *3 (N.D. Cal. Aug. 23, 2022) (quoting *Sierra Club v. 6 U.S. Forest Serv.*, 843 F.2d 1190, 1195 (9th Cir. 1988) (citations omitted)). To obtain preliminary 7 relief, Plaintiffs must "show that they themselves are likely to suffer irreparable harm absent an 8 injunction." *Nat'l Wildlife Fed'n*, 886 F.3d at 822 (citations omitted). 9 The court agrees with Plaintiffs that they are likely to suffer irreparable harm in the 10 absence of a preliminary injunction. Members from Plaintiff organizations submitted detailed 11 declarations attesting to the harm that would be caused to them personally by the implementation 12 of Contract 3B. (Doc. Nos. 19-4, 19-5, 19-6, 19-7.) For example, a member of both Plaintiff 13 American River Trees and Plaintiff Save the American River Association affirmed he "regularly 14 visit[s] the American River Parkway in the Contract 3B area for dog walking, hiking, wildlife 15 observation, and enjoyment of the water in the shade of the mature riparian forest." (Doc. No. 19- 16 5 at ¶ 5.) He also stated he has visited the Contract 3B area since 2002 and plans "to continue 17 going to the Contract 3B area nearly every day for the foreseeable future to enjoy these areas 18 through [his] retirement." (Id. at ¶ 7.) Further, he affirmed that he "personally depend[s] on the 19 remaining mature riparian forest within the [Contract] 3B area for [his] recreational and other 20 interests," and if activity under the Contract goes forward as scheduled, his "interest in this 21 special area of the Lower American River will be irreparably harmed." (Id. at ¶ 11.) 22 A member of both Plaintiff American River Trees and Plaintiff Center for Biological 23 Diversity affirmed that his home for the pasty twenty-eight (28) years is located "about a block 24 away" from the Contract 3B site. (Doc. No. 19-4 at ¶ 5.) He stated that he regularly walks to a 25 beach located within the Contract 3B area, that the "American River Parkway and its wildlife 26 inspires [him] for art, music, and writing," and that the "environmental, aesthetic, recreational, 27 health, and spiritual values [he] derive[s] from the 3B area will be irreparably harmed" in the 28 absence of an injunction. (Id. at ¶¶ 16, 30, 31). Finally, he affirms that he would "continue to use 1 and enjoy all the 3B areas described" in his declaration in "both the short-term and long-term, if 2 the 3B Contract did not prevent [him] from doing so." (Id. at ¶ 31.) 3 In their declarations, Plaintiffs identify the near-term contract activities that will harm 4 their interests under Contract 3B. (Doc. Nos. 19-5 at ¶ 5; 19-4 at ¶¶ 19–21.) Plaintiffs discuss how 5 the vegetation clearing activities will inhibit their ability to use the affected portion of the Lower 6 American River for recreation. (Doc. Nos. 19-5 at ¶ 8; 19-4 at ¶¶

15–21); see also *Sierra Forest 7 Legacy v. Sherman*, 951 F.Supp.2d 1100, 1111 (E.D. Cal. 2013) (“To show such an injury, a 8 plaintiff must identify specifically planned tree-cutting, link the proposed tree-cutting to its 9 members’ specific interests, and demonstrate how the proposed tree-cutting will harm those 10 interests.”). Plaintiffs also discuss their plans to visit the 3B Contract area in the near future, and 11 specifically during when contract activities are scheduled to begin. (Doc. No. 19-5 at ¶ 7; 19-4 at 12 ¶ 31); see also *All. for the Wild Rockies*, 632 F.3d at 1135; *Sierra Forest Legacy*, 951 F.Supp.2d 13 at 1111 (“[Plaintiff] must identify tree-cutting within a particular area of a [] [f]orest that its 14 members plan to use in the future and demonstrate that the proposed tree-cutting will harm their 15 interests.”). 16 Finally, Federal Defendants’ argument that Plaintiffs will not be irreparably harmed 17 because Defendant USACE “minimized impacts to trees as much as possible while still meeting 18 flood risk reduction performance objectives” and limited the Contract 3B footprint as much as 19 possible is unavailing. (Doc. No. 33 at 39.) Defendant USACE’s efforts to reduce the number of 20 affected trees does not change the fact that at least 675 trees, including heritage oaks, will be 21 removed in the 3B Contract area, causing an irreparable environmental injury and impairing the 22 Plaintiffs’ ability to enjoy this area for the foreseeable future. See *All. for the Wild Rockies*, 632 23 F.3d at 1127 (noting that the “logical extension” of defendant’s argument that plaintiff can “view, 24 experience, and utilize” other areas of the forest “is that a plaintiff can never suffer irreparable 25 injury resulting from environmental harm in a forest area as long as there are other areas of the 26 forest that are not harmed”); see also *League of Wilderness Defs./Blue Mountains Biodiversity 27 Project v. Connaughton*, 752 F.3d 755, 764 (9th Cir. 2014) (“The logging of mature trees, if 28 indeed incorrect in law, cannot be remedied easily if at all. Neither the planting of new seedlings 1 nor the paying of money damages can normally remedy such damage.”). 2 Accordingly, the court finds that Plaintiffs have demonstrated they will be irreparably 3 harmed in the absence of a preliminary injunction. 4 3. Balance of the Equities and the Public Interest 5 The last two Winter factors merge when the government is the opposing party. *Drakes 6 Bay Oyster Co. v. Jewell*, 747 F.3d 1073, 1092 (9th Cir. 2014) (citing *Nken v. Holder*, 556 U.S. 7 418, 435 (2009)). “If irreparable environmental injury ‘is sufficiently likely,’ as in this case, ‘the 8 balance of harms will usually favor the issuance of an injunction to protect the 9 environment.’” *Env’t Prot. Info. Ctr. v. Carlson*, 968 F.3d 985, 991 (9th Cir. 2020) (quoting 10 *Amoco Prod. Co. v. Vill. of Gambell*, 480 U.S. 541, 545 (1987)). When a plaintiff has 11 demonstrated serious questions going to the merits, the balance of the equities must tip sharply in 12 plaintiff’s favor. *All. for the Wild Rockies*, 632 F.3d at 1134–35. “In other words, the 13 environmental risk were the preliminary injunction not granted must be weighed against the 14 economic loss or other risk were the injunction granted, and the scale must tip sharply on the side 15 of environmental risk.” *Bair v. California Dep’t of Transp.*, No. 10-cv-04360-WHA, 2011 WL 16 2650896, at *8 (N.D. Cal. July 6, 2011). 17 The court understands the importance of the Project, and Contract 3B specifically, in 18 reducing the overall flood risk in the Sacramento metropolitan area. (Doc. No. 20-9 at 56.) 19 However, the Ninth Circuit has

recognized the well-established “public interest in preserving 20 nature and avoiding irreparable environmental injury.” *All. for the Wild Rockies*, 632 F.3d at 1138 21 (citation omitted). The public interest in preserving the natural landscape along the Lower 22 American River for recreational purposes is especially strong, where, as here, the river is 23 designated for protection under both the federal Wild and Scenic Rivers Act and the California 24 Wild and Scenic Rivers Act. (Doc. No. 19-1 at 30.) 25 The court also recognizes the potential economic hardship to Defendants now that

26 Contract 3B has been awarded. Although Defendants’ economic hardship and the overall flood 27 risk in Sacramento are of serious concern, in balancing the equities, the scale tips sharply in favor 28 of preserving the natural landscape along the Lower American River and the at least 675 trees, 1 some of which are heritage trees, while this case is resolved on the merits. See *Bair*, 2011 WL 2 2650896, at *8; *Env’t Prot. Info. Ctr.*, 968 F.3d at 991. This is especially true given the 3 narrowness of the injunction in the context of the overall flood mitigation Project. The proposed 4 injunction will only prevent Defendants from proceeding with vegetation clearing activity as 5 authorized by Contract 3B. Defendants are not enjoined from proceeding with other parts of the 6 Project, some of which are already underway. See *Sierra Forest Legacy v. Rey*, 577 F.3d 1015, 7 1022 (9th Cir. 2009) (“When deciding whether to issue a narrowly tailored injunction, district 8 courts must assess the harms pertaining to injunctive relief in the context of that narrow 9 injunction.”). Indeed, as Defendants acknowledge, construction on the portion of the Project 10 affecting the most at-risk sections of the Lower American River has already been completed. 11 (Doc. No. 23 at 11.) Further construction on portions of the Project affecting other high-risk 12 portions of the Lower American River is ongoing and will not be impacted by this injunction. (*Id.* 13 at 12.) 14 Accordingly, the courts finds that Plaintiffs have demonstrated that this factor tips sharply 15 in favor of granting the preliminary injunction. 16 B. Bond 17 Federal Rule of Civil Procedure 65(c) enables a district court to issue a preliminary 18 injunction “only if the movant gives security in an amount that the court considers proper to pay 19 the costs and damages sustained by any party found to have been wrongfully enjoined or 20 restrained.” Fed. R. Civ. P. 65. “Rule 65(c) invests the district court ‘with discretion as to the 21 amount of security required, if any.’” *Johnson v. Couturier*, 572 F.3d 1067, 1086 (9th Cir. 2009) 22 (quoting *Jorgensen v. Cassiday*, 320 F.3d 906, 919 (9th Cir. 2003)). District courts have 23 “discretion to dispense with the security requirement, or to request mere nominal security, where 24 requiring security would effectively deny access to judicial review.” *People of State of Cal. ex rel. Van De Kamp v. Tahoe Reg’l Plan. Agency*, 766 F.2d 1319, 1325 (9th Cir.), amended, 775 26 F.2d 998 (9th Cir. 1985)). In exercising this discretion, district courts “routinely impose either no 27 bond or a minimal bond in public interest environmental cases.” *City of S. Pasadena v. Slater*, 56 28 F. Supp. 2d 1106, 1148 (C.D. Cal. 1999) (citing *People of State of Cal. ex rel. Van De Kamp*, 766 1 F.2d at 1325)). 2 Here, Plaintiffs request that no or only nominal bond be required, (Doc. No. 19-1 at 30), 3 while Federal Defendants request the court require Plaintiffs to post \$256,815.00, which would 4

cover financial losses due to project delay. (Doc. Nos. 23 at 37; 44 at 3.) The court has reviewed 5 the evidence submitted by the parties and declines to require Plaintiffs to post Federal 6 Defendants’ requested bond given that the imposition of a significant bond would impact 7 Plaintiffs’ ability to pursue this action and future environmental public interest litigation. (Doc. 8 No. 39 at ¶¶ 2–4) (Plaintiff Save the American River Association is a “non-profit, public benefit, 9 corporation” that “relies extensively on volunteers for its efforts” and is “unable to post anything 10 other than a nominal bond in this litigation.”); (Doc. No. 38 at ¶¶ 3, 4) (Plaintiff American River 11 Trees is an “unincorporated association” with “no employees or even a bank account” and “[a]ny 12 bond would pose serious, undue hardship. . . .”); (Doc. No. 40 at ¶¶ 3, 4, 7–9) (Plaintiff Center for 13 Biological Diversity is a “nonprofit conservation organization” whose “funding comes primarily 14 from charitable contributions and grants from private foundations” and that the imposition of a 15 bond each time it sought injunctive relief “would curtail [its] ability to achieve [its] mission.”). 16 Indeed, “[i]t is well established that in public interest environmental cases the plaintiff need not 17 post bonds because of the potential chilling effect on litigation to protect the environment and the 18 public interest.” *Landwatch v. Connaughton*, 905 F. Supp. 2d 1192, 1198 (D. Or. 2012); see also 19 *Earth Island Inst. v. U.S. Forest Serv.*, 2006 WL 3359192, at *1, 4 (E.D. Cal. Nov. 20, 20 2006) (declining to increase a \$1,000 bond to a \$200,000 bond where plaintiffs demonstrated that 21 “imposition of a bond would pose a hardship chilling their ability to mount environmental 22 challenges”); *Save Strawberry Canyon v. Dep’t of Energy*, 613 F. Supp. 2d 1177, 1191 (N.D. Cal. 23 2009), adhered to, No. 08-cv-03494-WHA, 2009 WL 1098888 (N.D. Cal. Apr. 22, 2009) (court 24 did not require bond where plaintiff was a non-profit that would have difficulty posting bond and 25 “the proposed bond requirement would effectively deny access to judicial review”). Instead, the 26 court will require Plaintiffs to post a \$1,000 nominal bond. 27 ///// 28 /////

1 CONCLUSION

2 For the reasons explained above, 3 1. Plaintiffs’ motion for a preliminary injunction (Doc. No. 19) is GRANTED; 4 2. Federal Defendants’ motion to extend page limits (Doc. No. 34) is GRANTED; 5 3. The court ENJOINS any ground or vegetation disturbing activities authorized 6 under Contract 3B of the Project until this court reaches a decision on the merits; 7 and 8 4. Plaintiffs must post a \$1,000 bond, apportioned amongst themselves, on or before 9 November 27, 2025.

10 11

b IT IS SO ORDERED. □

13 | Dated: _November 20, 2025 _ DUC Dena Coggins 14 United States District Judge 15 16 17 18 19 20 21 22 23 24 25 26 27 28 22