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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
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9 Central Arizona Water Conservation  
10 District,

11 Plaintiff,

12 v.

13 United States Army Corps of Engineers,  
14 Defendant.

No. CV-18-00724-PHX-DLR

**ORDER**

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16 Before the Court is Plaintiff Central Arizona Water Conservation District's  
17 ("District") motion for a temporary restraining order (TRO). (Doc. 7.) The motion is  
18 fully briefed (Doc. 17) and the Court heard oral argument on March 9, 2018. At the  
19 hearing, the Court denied the District's motion and informed the parties that this written  
20 order would follow.

21 **I. Background**

22 The Alamo Dam ("Dam") is owned, operated, and maintained by Defendant  
23 United States Army Corps of Engineers ("Corps"). The Dam is located between Alamo  
24 Lake and the Bill Williams River. On March 2, 2018, the Corps issued an Environmental  
25 Assessment (EA) and a Finding of No Significant Impact (FONSI) for the Alamo Dam  
26 Flushing Release. The release, which is the first step in the Corps' efforts to conduct  
27 long overdue maintenance on the Dam, is intended to remove accumulated sediment from  
28 the Dam and lower the water elevation in Lake Alamo so as to increase diver safety. The

1 proposed release is scheduled to last 19 days, starting at 8:00 a.m. on March 12, 2018.

2 The District owns and operates a water intake and pumping plant in Lake Havasu,  
3 adjacent to the mouth of the Bill Williams River, approximately 39 miles downstream  
4 from the Dam. Concerned that the Corps failed to take into account the environmental  
5 impact of its release, specifically increased downstream turbidity, the District filed this  
6 lawsuit on March 6, 2018, alleging violations of the National Environmental Policy Act  
7 (NEPA).<sup>1</sup> Concurrent with the complaint, the District filed the motion at issue, which  
8 requests that the Court temporarily enjoin the Corps from initiating the scheduled release.

## 9 **II. Legal Standard**

10 The standard for issuing a TRO is identical to the standard for issuing a  
11 preliminary injunction. *Whitman v. Hawaiian Tug & Barge Corp./Young Bros., Ltd.*  
12 *Salaried Pension Plan*, 27 F. Supp. 2d 1225, 1228 (D. Haw. 1998). A plaintiff seeking a  
13 TRO must establish that he is likely to succeed on the merits and to suffer irreparable  
14 harm in the absence of preliminary relief, that the balance of equities tips in his favor, and  
15 that an injunction is in the public interest. *Winter v. Natural Res. Def. Council, Inc.*, 555  
16 U.S. 7, 20 (2008); *Am. Trucking Ass’n, Inc. v. City of L.A.*, 559 F.3d 1046, 1052 (9th Cir.  
17 2009). These elements are balanced on a sliding scale, whereby a stronger showing of  
18 one element may offset a weaker showing of another. *See Alliance for the Wild Rockies*  
19 *v. Cottrell*, 632 F. 3d 1127, 1131, 1134-35 (9th Cir. 2011). The sliding-scale approach,  
20 however, does not relieve the movant of the burden to satisfy all four prongs for the  
21 issuance of a TRO. *Id.* at 1135. Instead, “‘serious questions going to the merits’ and a  
22 balance of hardships that tips sharply towards the plaintiff can support issuance of a  
23 [TRO], so long as the plaintiff also shows that there is a likelihood of irreparable injury  
24 and that the [TRO] is in the public interest.” *Id.* at 1135. The movant bears the burden of  
25 proof on each element of the test. *Envtl. Council of Sacramento v. Slater*, 184 F. Supp.

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27 <sup>1</sup> Turbidity is the cloudiness or haziness of water and is a key test of water quality.  
28 The metric for measuring turbidity levels is called nephelometric turbidity units (NTUs).  
According to the District, turbidity levels between 20 and 50 NTUs can require it to shut  
down its pumping plant. (Doc. 7 at 24.)

1 2d 1016, 1027 (E.D. Cal. 2000).

2 **III. Discussion**

3 **A. Likelihood of Success on the Merits**

4 The purpose of NEPA is “to establish procedural mechanisms that compel  
5 agencies, such as the Corps, to take seriously the potential environmental consequences  
6 of a proposed action. [Courts] have termed this crucial evaluation a ‘hard look.’” *Ocean*  
7 *Advocates v. U.S. Army Corps of Eng’rs*, 402 F.3d 846, 864 (9th Cir. 2005) (citation  
8 omitted). Under NEPA, a federal agency is required to prepare, “to the fullest extent  
9 possible,” an environmental impact statement for “every . . . major Federal actio[n]  
10 significantly affecting the quality of the human environment.” 42 U.S.C. § 4332(2)(C).  
11 An agency, however, is not required to prepare a full Environmental Impact Statement  
12 (EIS) if it determines, based on the EA, that the proposed action will not have a  
13 significant impact on the environment. 40 C.F.R. §§ 1508.9(a), 1508.13.

14 Plaintiff’s primary contention is that the Corps’ failure to conduct an EIS was a  
15 result of its arbitrary and capricious decision to limit the project area in the EA to the  
16 mouth of the Bill Williams River and to not consider the effects of the release on Lake  
17 Havasu. Specifically, the District contends that the Corps erred in its position that it need  
18 not conduct a new EIS with respect to the Lake Havasu area because its effects “have  
19 been previously evaluated in the 1999 EIS.” (Doc. 7-4 at 10.) The District challenges  
20 the accuracy of this position and asserts that the proposed agency action is unlawful  
21 because the Corps’ failed to consider its foreseeable effects. (Doc. 7 at 15-16.)

22 In support of its contention, the District cites to the 1999 EIS, which states in  
23 relevant part,

24 Larger discharges into the Bill Williams River would result in  
25 substantial benefits to downstream riparian vegetation, while  
26 increasing turbidity and sedimentation within the river. Since  
27 these releases would be generally short term in nature and  
would mimic the natural conditions in the river before  
construction of Alamo Dam, this impact is not considered

28 (Doc. 7-9 at 4.) The District argues the Corps’ reliance on the 1999 EIS is misplaced

1 because the 1999 EIS did not expressly discuss the Lake Havasu area. In response, the  
2 Corps contends that Lake Havasu is included in the term “downstream” because it is  
3 located downstream from the Bill Williams River. (Doc. 17 at 18.)

4 Given the ambiguous language of the 1999 EIS, the District has raised some  
5 questions going to the merits of its underlying claim, though the Court is not confident  
6 that these questions are serious enough to support the issuance of a TRO. Regardless,  
7 however, the District’s motion for a TRO is denied because it has not demonstrated a  
8 likelihood of irreparable harm or that the balance of equities tips sharply in its favor.

9 **B. Irreparable Harm**

10 The District argues that the Corps’ planned release will significantly increase  
11 turbidity at the intake for its pumping plant, and that the increased turbidity will persist  
12 for a week or more. As a result, the District will face increased maintenance costs  
13 stemming from pumping water with elevated turbidity. Additionally, when the turbidity  
14 elevates beyond a certain threshold, the District will be forced to completely shut down  
15 its plant until the elevated turbidity abates. (Doc. 7 at 23-24.)

16 The District’s concern over elevated turbidity levels is too speculative to support  
17 the issuance of a TRO. In support of its claim, the District cites United States Geological  
18 Survey (USGS) studies that document water releases from the Dam in the spring of 2005,  
19 2006, and 2010. (Doc. 7-3 at 39, 45.) The 2005 release caused the District’s intake to  
20 experience turbidity levels exceeding 20 NTUs, which persisted for significant periods of  
21 time. The conditions of the 2005 release, however, were so unlike the conditions of the  
22 Corps’ current proposed release that it offers little comparative value. For example, the  
23 duration and velocity of the 2005 release far exceeded the Corps’ proposed release. The  
24 2005 release flowed at a velocity ranging from 6,000-7,300 cubic feet per second (cfs) for  
25 168 hours, whereas the Corps’ planned release peaks at 5,000 cfs for only 12 to 13 hours.  
26 Additionally, in 2005 the conditions between the Dam and Lake Havasu were not  
27 conducive to absorbing the water flow because of recent rainfall and earlier releases.  
28 These same conditions do not exist here.

1            Instead, the 2006 and 2010 releases offer better evidence of the likely result of the  
2 Corps' release. Much like the proposed release, the 2006 and 2010 releases confined  
3 their peak flow to a shorter duration.<sup>2</sup> Moreover, unlike the 2005 release, the conditions  
4 between the Dam and Lake Havasu in 2006 and 2010 were better suited to absorb the  
5 increased water flow. The result: the 2006 release did not cause excessive turbidity  
6 increases and, although the 2010 release did, the elevated turbidity levels abated to a safe  
7 level within a day or two.<sup>3</sup> For these reasons, the Court finds that the District's  
8 allegations of harm are too speculative.

9            **C. Balance of the Equities**

10           When balancing the equities, the Court "must balance the competing claims of  
11 injury and must consider the effect on each party of the granting or withholding of the  
12 requested relief." *Winter*, 555 U.S. at 24 (citation omitted). Here, the balance of equities  
13 tips in the Corps' favor.

14           The Corps provided evidence that it would lose approximately \$150,000 if the  
15 scheduled release is enjoined. Moreover, if the TRO were granted and later dissolved  
16 after a more thorough preliminary injunction hearing, the Corps likely would be required  
17 to traverse the administrative approval process anew. Finally, given that dam  
18 maintenance is already long overdue, further delays will perpetuate ongoing concerns  
19 about dam integrity. When weighing the Corps' concrete harms with the speculative  
20 concerns of the District, the balance weighs in the Corps' favor. Accordingly,

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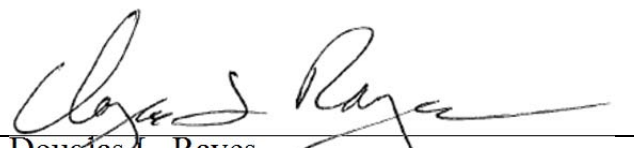
26           <sup>2</sup> In 2010, the peak flow was 3,000 cfs for 36 hours.

27           <sup>3</sup> The USGS placed turbidity measuring stations throughout Lake Havasu. Station  
28 25 was located at the intake of the District's pumping plant. The turbidity measurements  
discussed above correspond with those taken at station 25.

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**IT IS ORDERED** that the District’s motion for a TRO (Doc. 7) is **DENIED**. Given that the Corps’ scheduled release is already underway, it appears likely that further proceedings are moot. The parties are therefore ordered to confer and, within **7 days** of the date of this order, submit either a proposed preliminary injunction briefing and hearing schedule or a status report indicating how the parties wish to proceed.

Dated this 15th day of March, 2018.

  
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Douglas L. Rayes  
United States District Judge