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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

PIT RIVER TRIBE; NATIVE  
COALITION FOR MEDICINE LAKE  
HIGHLANDS DEFENSE; MOUNT  
SHASTA BIOREGIONAL ECOLOGY  
CENTER; and MEDICINE LAKE  
CITIZENS FOR QUALITY  
ENVIRONMENT,

Plaintiffs,

v.

BUREAU OF LAND MANAGEMENT;  
UNITED STATES DEPARTMENT OF  
THE INTERIOR; CALPINE  
CORPORATION; and CPN  
TELEPHONE FLAT, INC.,

Defendants.

No. 2:19-cv-02483-JAM-AC

**ORDER GRANTING DEFENDANT  
CALPINE'S MOTION FOR  
RECONSIDERATION**

Before this Court is Defendant Calpine's request for reconsideration ("Mot."), ECF No. 96, of the Magistrate Judge's ruling denying Calpine's motion for protective order ("Order"), ECF No. 95. Calpine requests the Court overrule that portion of the Magistrate Judges ruling and grant the motion for protective

1 order. For the reasons stated below the Court GRANTS Calpine's  
2 request.<sup>1</sup>

3  
4 I. OPINION

5 A. Legal Standard

6 When reviewing a party's objection to a non-dispositive  
7 pretrial ruling by a magistrate judge, the district court must  
8 "modify or set aside any part of the order that is clearly  
9 erroneous or contrary to law." Fed. R. Civ. P. 72(a). The  
10 district court reviews the magistrate's factual determinations  
11 and discretionary decisions under the "clearly erroneous"  
12 standard, while the "contrary to law" standard "allows  
13 independent plenary review of purely legal determinations by the  
14 magistrate judge." Sung Gon Kang v. Bureau Connection, Inc.,  
15 18-cv-01359-AWI-SKO, 2020 WL 2539292 at \*5 (May 19, 2020).

16 B. Analysis

17 The statutory language of § 706(1) states that "the court  
18 shall review the whole record or those parts of it cited by a  
19 party [. . .]" when reviewing cases under that section.

20 5 U.S.C. § 706(1). The "whole record" language references the  
21 administrative record. See Fla. Power & Light Co. v. Lorion,  
22 470 U.S. 729, 743-44 (1985).

23 Review of the Government's actions, or inaction, is limited  
24 to the administrative record compiled by the agency, subject to  
25 some exceptions. See Seattle Audubon Society v. Norton, No.

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27 <sup>1</sup> This motion was determined to be suitable for decision without  
28 oral argument. E.D. Cal. L.R. 230(g). The hearing was scheduled  
for August 24, 2021.

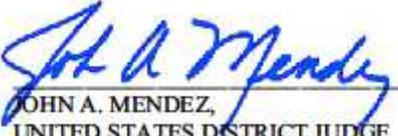
1 C05-1835L, 2006 WL 1518895 at \*3 (W.D. Wash. May 25, 2006)  
2 (noting the administrative record is a presumptive limitation of  
3 scope for discovery in a 706(1) action). Plaintiffs have failed  
4 to convince this Court that any exceptions should be applied  
5 here. Thus, any discovery from Calpine is unwarranted and  
6 unnecessary. Accordingly, the Court GRANTS Calpine's request  
7 for a protective order and reverses the Magistrate Judge's  
8 ruling on the issue.

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10 II. ORDER

11 For the reasons set forth above, the Court GRANTS Calpine's  
12 Motion for Reconsideration.

13 IT IS SO ORDERED.

14 Dated: October 7, 2021

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17 JOHN A. MENDEZ,  
18 UNITED STATES DISTRICT JUDGE  
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