



Shasta Dam Raise Project
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Introduction: We understand that the Westlands Water District (Westlands or WWD) is soliciting scoping comments to prepare a California Environmental Quality Act (CEQA) draft environmental impact report (EIR) for something it describes as the Shasta Dam Raise Project (SDRP). As described, all of the action alternatives are in conflict with state law, and construction by the U.S. Bureau of Reclamation (Reclamation) is also in conflict with federal law. It is also illegal for Westlands to assist or cooperate with Reclamation in furtherance of the action alternatives in Reclamation’s Shasta Lake Water Resources Investigation (SLWRI), the apparent project that Westlands is scoping.

The Westlands November 2018 Initial Study/Notice of Preparation (IS/NOP) asserts that it is the lead agency for the SDRP and, in chapter one from page 1-4 onwards, borrows from Reclamation’s final Environmental Impact Statement (FEIS) to describe project alternatives that one presumes would be likely to be considered in the EIR. Then in chapter two of the IS/NOP, it displays an environmental checklist evaluation that largely relies on Reclamation’s SLWRI FEIS impact analysis.

IS/NOP purpose: The IS/NOP is silent on its purpose. An uninformed reader might assume that Westlands intends to build one of the Shasta Dam raise alternatives previously evaluated by Reclamation. We are not that uninformed. This is a federal dam, and the Department of the Interior has made (improperly) a determination of readiness for construction under the Water Infrastructure for the Nation Act of 2016 (WIIN) and has written that it intends to have a local cost-sharing partner for the SLWRI later this

year, with construction starting in late 2019. (Report to the House and Senate Committees on Appropriations, Distribution of Fiscal Year 2017 Funding for Water Conservation and Delivery- Pub. L. 114-322 (Section 4007), Water and Related Resources, Bureau of Reclamation and Discussion of Criteria and Recommendations)

However, an informed reader would not conclude that we have competing dam builders here, but that the purpose of the EIR is CEQA compliance to support a Westlands cost-sharing partnership with Reclamation to raise Shasta Dam. After all, Westlands has twice signed agreements in principle to cost share with Reclamation on the SLWRI Shasta Dam raise and last year received authorization from its board to “submit a request to the Secretary of the Interior for the enlargement of Shasta Dam and Reservoir, indicating a willingness to potentially share the costs of the enlargement.” (Westlands Water District BoD Feb. 23, 2018, item 7c) Westlands is also a prominent member of the San Luis & Delta-Mendota Water Authority, whose Board last year authorized their general manager to “submit a request to the Secretary of the Interior for the enlargement of Shasta Dam and Reservoir, indicating a willingness to potentially share the costs of the enlargement.” (San Luis & Delta-Mendota Water Authority Board of Directors Regular Meeting Minutes for March 8, 2018, item 10)

Legality of SDRP and participation by Westlands: Regardless, either of these purposes violates the California Wild and Scenic Rivers Act (CAWSRA), which is part of the California Public Resources Code (PRC).

California Public Resources Code §5093.542 (b) No dam, reservoir, diversion, or other water impoundment facility shall be constructed on the McCloud River from Algoma to the confluence with Huckleberry Creek, and 0.25 mile downstream from the McCloud Dam to the McCloud River Bridge; nor shall any such facility be constructed on Squaw Valley Creek from the confluence with Cabin Creek to the confluence with the McCloud River. (*emphasis added*)

Reclamation’s SLWRI FEIS determined that its action alternatives are in conflict with the PRC (SLWRI FEIS p. 25-40). By federal Reclamation law (Section 8 of the Reclamation Act & 1992 Central Valley Improvement Act, §3406(b) in part, title 34 Public Law 102-575) and the WIIN (WIIN §4007(b), §4009(j), & §4012), Reclamation projects must comply with state law. Westlands is a political subdivision of the state of California and subject to state law. It is also an agency of the state (Cal. Water Code § 37823 & Cal. Gov. Code § 16271(d)), subject to another provision of CAWSRA:

Cal. Pub. Res. Code § 5093.542(c). Except for participation by the Department of Water Resources in studies involving the technical and economic feasibility of enlargement of Shasta Dam, no department or agency of the state shall assist or cooperate with, whether by loan, grant, license, or otherwise, any agency of the federal, state, or local government in the planning or construction of any dam, reservoir, diversion, or other water impoundment facility that could have an adverse effect on the free-flowing condition of the McCloud River, or on its wild trout fishery. (*emphasis added*)

State Actions: Unlike DWR, which is not partnering with Westlands in the preparation of a California Environmental Quality Act environmental impact report or with Reclamation in a joint EIS/EIR, Westlands does not get a pass here. As Westlands is aware, these three-decade-old provisions of California law have not gone unnoticed. For example, California Natural Resources Secretary John Laird wrote Congressional leaders last year:

As you may be aware, the Shasta Dam enlargement project would violate California law due to the adverse impacts that project may have on the McCloud River and its fishery. California Public Resources Code section 5093.542 generally prohibits state agencies and departments from assisting in any way “in the planning or construction of any dam, reservoir, diversion, or other water impoundment facility that could have an adverse effect on the free-flowing condition of the McCloud River, or on its wild trout fishery.”

The Shasta Dam raise was one of the surface storage projects eligible for further investigation in the CALFED 2000 Record of Decision (CALFED ROD). California Water Code §7951(a) made CALFED ROD projects potentially eligible for Proposition 1 chapter 8 Water Supply Investment Program (WSIP) funding. However, §7951(a) also excludes CALFED ROD surface storage projects “prohibited by Chapter 1.4 (commencing with Section 5093.50) of Division 5 of the Public Resources Code.” §7951(a) is citing the California Wild and Scenic River Act chapter of the Public Resources Code. In creating regulations for the WSIP, the California Water Commission chose to define and list the CALFED surface storage projects. Citing §7951(a) they listed the projects compliant with Water Code. The list did not include the Shasta Dam raise. (California Code of Regulations Title 23. Waters. Division 7. California Water Commission, Chapter 1 Water Storage Investment Program, §6001(a)(10)) It thus appears that at least one California Commission has made a regulatory finding that the Shasta Dam Raise

Project/SLWRI is prohibited by the California Wild & Scenic Rivers Act — and that finding is already embodied in adopted regulations.

This finding did not go unnoticed in Secretary Laird's letter to Congressional leaders:

The Shasta Dam enlargement project would inundate several miles of the protected McCloud River in violation of state law and therefore is not eligible for Proposition 1 funding.

The SLWRI FEIS identified seven major approvals and permits that would be required from state and local departments, boards, commissions, and districts to move forward with this project. Clearly, judging from actions by the California Resources Agency Secretary and the California Water Commission, issuance of such approvals and permits would be unlikely because they would be unlawful.

Federal Analysis: But California is not alone in its conclusions that this project is unlawful. Reclamation has also made this case.

Chapter 25 of Reclamation's December 2014 SLWRI FEIS is devoted to detailed discussions with maps of consistency with the CAWRSR and the U.S. Forest Service's (USFS) findings and administration of its National Wild and Scenic Rivers Act (WSRA) §5(d), Forest Service Handbook, and the Shasta-Trinity National Forest Land and Resource Management Plan responsibilities.

These federal analysis discussions directly bear on consistency with CAWSRA in some important matters. They also bear on federal law.

McCloud River is free-flowing: One of the important findings of the SLWRI FEIS is that “[d]espite upstream and downstream dams and diversions, the lower McCloud River meets the definition of a free-flowing river under both the Federal WSRA and PRC.” (SLWRI FEIS, p. 25-19)

Action alternatives impact on CAWSRA requirements: Reclamation found that the impacts of the SLWRI FEIS action alternatives on the §5093.542 on free-flowing would be significant and unavoidable. (SLWRI FEIS chpt. 25 alternative discussions)

The impacts of SLWRI FEIS action alternatives on the PRC §5093.542 McCloud fishery were found to be potentially significant. (SLWRI FEIS chpt. 25 alternative discussions)

Conclusion: It would appear that important representatives of the state of California have concluded that the Westlands Shasta Dam Raise Project (if true to its name) violates state law. In addition, both the state and U.S. Bureau of Reclamation have made findings that would prohibit issuance of state and local permits and Westlands from assisting and cooperating with Reclamation in the planning or construction of the Shasta Dam raise by loan, grant, *or otherwise*.

The question then becomes why has Westlands started scoping for an EIR for its self-named Shasta Dam Raise project. The law and facts prohibiting the SDRP are clear.

It is thus difficult to understand why Westlands is scoping this project. To be even more clear, it is difficult to understand why members of the public, tribes, NGOs, and government agencies are being asked to provide scoping comments for an EIR that should not be undertaken.

Request: Instead, we request that Westlands withdraw, in writing, from pursuing the SDRP or SLWRI project(s) and end the preparation of an EIR for the SDRP. We also request that the Westlands Board withdraw its authorization for its general manager “to submit a request to the Secretary of the Interior for the enlargement of Shasta Dam and Reservoir, indicating a willingness to potentially share the costs of the enlargement.” We request that you notify us, news outlets, and your scoping contacts when you have done so.

Even if the project was not illegal, the IS/NOP and apparent EIR process is still flawed: Finally, we should make a few remarks on the IS/NOP process and apparent EIR process.

Westlands has left to speculation (informed or otherwise) its role in the project. It has therefore also failed to justify why it is the lead agency. Its statement in the IS/NOP is vague and less than informative.

The EIR prepared by WWD for this project will be used by WWD and, potentially, other agencies to make the CEQA discretionary decisions necessary for project authorization and implementation consistent with federal, state and local agency requirements. (IS/NOP p. 1-20)

It would seem, however, that Westlands intends to prepare this SDRP EIR to advance unlawful activities by itself and others. This is neither appropriate for an EIR nor for the reputation of the District.

Even if this EIR was not in support of an unlawful project, Westlands has already failed to implement a credible CEQA process. We offer some brief illustrative comments:

(1) The SDRP process is improperly rushed. Westlands' EIR timeline is unrealistic given the complexity of the analysis required.

(2) There are numerous potential project impacts that the IS/NOP does not adequately address.

(3) Westlands is chilling public participation

- There was one scoping meeting in Redding. There would be impacts of the SDRP well downstream.
- The December scoping meeting conflicted with a major Bay-Delta Water Quality Control Plan hearing before the State Water Resources Control Plan.
- Westlands denied our request to reschedule the Redding scoping meeting and has not scheduled an additional scoping meeting, either in Redding or in other appropriate locations.
- An opportunity for oral public comment was not scheduled or announced. A last minute decision to allow off-the-record public comment, while appreciated by those in attendance, no doubt discouraged attendance by others and did not allow meeting attendees to provide oral comments on the record.
- The comment period was over the holidays
- The scoping notice incorrectly stated that the 30-day comment period "is due to the time limits mandated by State law." This is not true. Thirty days is minimum. It also stated that the comments would be due within 30-days of the receipt of notice, rather than a date certain. The actual date of receipt of notice could vary quite a bit.
- The scoping notice was sent via USPS. Email is often a more expeditious way of contacting people.
- There is no apparent process for getting on the notification list before submission of written comments. As a result, interested parties lack critical information — e.g. the ten-day deadline extension for scoping comments.
- A draft EIR should be posted on Westlands website and notice of its availability should be provided via email or U.S. mail to all interested parties.

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