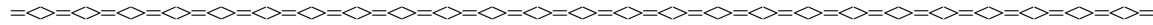




## Winnemem Wintu Tribe

14840 Bear Mountain Rd  
Redding, CA 96003



Shasta Dam Raise Project  
c/o: Stantec  
3301 C Street, Suite 1900  
Sacramento, CA 95816

January 14, 2019

**Introduction:** On November 30, 2018 Westlands Water District (Westlands or WWD) issued an Initial Study and Notice of Preparation (IS/NOP) stating that it was the lead agency for a Shasta Dam Raise Project (SDRP or Project) [formerly known as the Shasta Lake Water Resources Investigation (SLWRI)], and began soliciting scoping comments to prepare a California Environmental Quality Act (CEQA) draft environmental impact report (EIR) for the Project. This Project would increase the existing height of Shasta Dam by 18.5 feet and purportedly expand the capacity of Shasta Lake by up to 634,000-acre feet. In response to this solicitation, the Winnemem Wintu Tribe (WWT) issues the following comments, assertions, and raises questions about the project's legality.

From reading the IS/NOP WWD does **not** define who is actually the proponent of the project. A lay person reading the IS/NOP would get the impression that it is WWD who will carry out this project, yet WWD makes no distinction. No proponent is identified. This omission renders the project description as deficient. The Project proponent must also be identified in order that transparency is maintained by WWD. Who is funding this EIR effort? If the EIR finds that the Project must be amended to avoid, lessen or mitigate environmental effects, who will amend the Project?

Also, from reading the IS/NOP it appears that WWD has made no initial findings of its own, but relies heavily if not entirely on Reclamation's SWLRI Final EIS released in 2014, and Reclamation's SWLRI Final Feasibility Report released in 2015. IS/NOP *ibid*.

All of the alternatives and actions described in the IS/NOP, except the No Action alternative, are in conflict with state law, and as such, it is illegal for Westlands to assist or cooperate with Reclamation in furtherance of any action alternatives in Reclamation's SLWRI FEIS. It is also interesting to note, that although Reclamation's FEIS had a No Action alternative, WWD conveniently leaves that one out of their table. Table 1.4-6



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With this project's goal of increasing storage in Shasta Dam, the WWT suggest that an alternative be evaluated and included for strictly silt and debris removal from the bottom of Shasta Lake.

### **Who We Are:**

The Winnemem Wintu Tribe is an historic non-gaming Native California Tribe. The Winnemem's traditional territory included the east and west sides of the upper Sacramento River watershed, the McCloud River and Squaw Creek watersheds, and approximately 20 miles of the Pit River from the confluence of the McCloud River, Squaw Creek and Pit River up to Big Bend.

The Winnemem Wintu are a spiritual people. We believe in a Creator who gave life and breath to all things. In our creation story we were brought forth from a sacred spring on Mt. Shasta. We were pretty helpless, couldn't speak, pretty insignificant. But the Salmon, the Nur, took pity on us and gave us their voice, and in return we promised to always speak for them. Side-by-side, the Winnemem Wintu and the Nur have depended on each other for thousands of years - the Winnemem speaking, caring, and trying to protect the salmon, and the salmon giving of themselves to the Winnemem to provide sustenance throughout the year. Ceremonies, songs, dances, and prayers of the relationship between the salmon and the Winnemem Wintu are intricately woven into the very fabric of Winnemem Wintu culture and spirituality.

Salmon were, and still are, an essential component of Winnemem Wintu culture and were once a staple food. But the salmon have been extirpated upstream of Shasta Dam since its completion in 1944. But the loss of salmon was not the only tragedy as a result of completion of the Dam. Over 90 percent of the Tribe's village sites, sacred sites, burial sites, and cultural gathering sites are now submerged under Shasta Reservoir, and salmon no longer breed upstream of Shasta Dam. Yet the WWT continue to maintain its spiritual, cultural, and traditional connections to its remaining accessible sacred sites, historical lands and waters.

### **HISTORICAL BACKGROUND**

In 1851, the federal government and representatives from the Winnemem and other Wintu bands signed the Treaty at Cottonwood Creek, ceding vast tribal lands to the



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federal government in exchange for reservation land, food, and clothing. Though this treaty was never ratified by the United States Congress, the federal government nonetheless deemed the land ceded, and began giving land, mineral, and resource rights to private parties in the Winnemem's historical homeland with no compensation to the Winnemem. Eventually, some of the Winnemem Wintu received Indian allotments which allowed them to remain on the McCloud River and other traditional sites. However, the majority of habitable allotments were flooded when Reclamation constructed Shasta Dam.

In 1941, Congress passed 55 Stat. 612, which gave the United States the right to take title to all tribal lands needed for the Central Valley Project and related infrastructure. The Act also promised that the Indians would be paid "just and equitable compensation" for the land taken, and that the sites of any "relocated cemeteries shall be held in trust by the United States for the appropriate tribe, or family." 55 Stat. 612 §§ 2, 4.

The Winnemem Wintu people were never provided "just and equitable compensation" for the United States government's massive appropriation of land for Shasta Reservoir. Even the Winnemem Wintu's sacred gravesites were violated. Reclamation moved approximately 183 Winnemem Wintu graves from Shasta Dam's impact area to a new site, styled the "Shasta Reservoir Indian Cemetery," and violated 55 Stat. 612 by failing to hold this site in trust for the Winnemem Wintu. Since the Winnemem Wintu were never compensated for their land allotments that were taken by the government and flooded by Shasta Dam, the Winnemem are still the rightful owners of that land. Reclamation cannot proceed with any plans that would enlarge Shasta Reservoir without first settling the Winnemem Wintu's claims to ownership of the land already flooded.

Due in large part to Reclamation's repeated violation of 55 Stat. 612, the Department of the Interior failed to include the Winnemem Wintu when the Department published the first list of "federally recognized" tribes. In 2008, the California Legislature passed Assembly Joint Resolution 39, which urges Congress to restore federal recognition to the Winnemem Wintu, but Congress has failed to act on this request. Reclamation has failed to accord the Winnemem Wintu full participation in Reclamation's decision-making process, despite the fact that its proposal to raise Shasta Dam will have a disproportionate, and profoundly adverse, effect on the Winnemem Wintu.



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The federal government's repeated uncompensated takings of Winnemem Wintu lands and destruction of their primary staple – the McCloud River's salmon – has incalculably harmed the Tribe. See

[https://www.usbr.gov/mp/nepa/includes/documentShow.php?Doc\\_ID=22627](https://www.usbr.gov/mp/nepa/includes/documentShow.php?Doc_ID=22627)

Winnemem Wintu Tribe comments on Reclamation's SWLRI Draft Feasibility Report (DFR)*ibid*.

*The Winnemem Wintu Tribe hereby incorporates by reference (see link above) every recital, exhibit, attachment, argument, statement and all other information contained within the Winnemem Wintu Tribe's comments submitted to Reclamation regarding Reclamation's SWLRI DFR, and hereby submits that each and every item contained therein is an actionable item within the scope of this WWD SDRP CEQA preparation and must be addressed wholly and individually in-part within WWD's CEQA Draft Environmental Impact Report (DEIR).*

### Relevance of Historical data under CEQA:

Title 14. Natural Resources

Division 6. Resources Agency

Chapter 3. Guidelines for Implementation of the California Environmental Quality Act

Article 5. Preliminary Review of Projects and Conduct of Initial Study

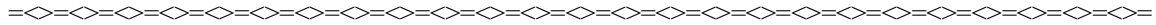
§ 15064. Determining the Significance of the Environmental Effects Caused by a Project.

(h)(1) When assessing whether a cumulative effect requires an EIR, the lead agency shall consider whether the cumulative impact is significant and whether the effects of the project are cumulatively considerable. An EIR must be prepared if the cumulative impact may be significant and the project's incremental effect, though individually limited, is cumulatively considerable. **"Cumulatively considerable" means that the incremental effects of an individual project are significant when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.** (emphasis added)



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(2) A lead agency may determine in an initial study that a project's contribution to a significant cumulative impact will be rendered less than cumulatively considerable and thus is not significant. When a project might contribute to a significant cumulative impact, but the contribution will be rendered less than cumulatively considerable through mitigation measures set forth in a mitigated negative declaration, the initial study shall briefly indicate and explain how the contribution has been rendered less than cumulatively considerable.

(3) A lead agency may determine that a project's incremental contribution to a cumulative effect is not cumulatively considerable if the project will comply with the requirements in a previously approved plan or mitigation program (including, but not limited to, water quality control plan, air quality attainment or maintenance plan, integrated waste management plan, habitat conservation plan, natural community conservation plan, plans or regulations for the reduction of greenhouse gas emissions) which provides specific requirements that will avoid or substantially lessen the cumulative problem in the geographic area in which the project is located. Such plans or programs must be specified in law or adopted by the public agency with jurisdiction over the affected resources through a public review process to implement, interpret, or make specific the law enforced or administered by the public agency. ***When relying on a plan or program, the lead agency should explain how the particular requirements in the plan or program ensure that the project's incremental contribution to the cumulative effect is not cumulatively considerable.*** If there is substantial evidence that the possible effects of a particular project are still cumulatively considerable notwithstanding that the project complies with the specified plan or mitigation program addressing the cumulative problem, an EIR must be prepared for the project. (emphasis added)

The cumulative impact data recorded prior to, during, and since completion of the existing Shasta dam is voluminous. The factual data shows immeasurable harm to the Winnemem Wintu Tribe's historical properties and cultural resources. It also shows decimated anadromous fish populations due to blockage of access to historical spawning grounds and cold-water habitat.



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Under CEQA, Westlands Water District will have to address each and every one of these prior affected areas and demonstrate how an enlarged Shasta Dam will not further effect or exacerbate the existing conditions cumulatively.

### Environment and Species:

With any new enlargement of Shasta Dam, especially with the seemingly preferred raise of 18.5 feet in height, the vegetation will have to be clear cut and removed all the way around the 371 miles of existing shoreline to make way for the new high-water mark. This new 'bathtub ring' will measure approximately 300 additional yards in height all the way around the lake. Within this proposed destruction of natural habitat lives various rare and endangered plant and animal species.

Some of them include, but not limited to:

- The yellow legged frog
- The Pileated Woodpecker
- The Shasta Salamanders (all three species
  - Hydromantes Samweli
  - Wintu Shasta Salamander
  - Shasta Salamander
- The Shasta Crayfish
- The Shasta Snow-wreath
- The Silver leaf Willow
- Wild Peach Bush

In addition to the destruction of plant and animal species, the construction activities around the dam as well as any new high-water level will cause the Winnemem Wintu Tribe to further lose:

- Sacred Trees necessary for specific Tribal Ceremonies
- Ceremonial Dance Grounds
- Herbal gathering sites necessary for Tribal Ceremonies
- Spiritual Doctoring Areas
- Ceremonial Stone gathering areas
- As well as the submergence of additional sacred sites and existing burial grounds.



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WWD will have to specifically address each and every one of these in the proposed EIR, and how they will be affected by any new dam enlargement.

### Questionable Project Legality:

The SDRP itself has questionable legality. Throughout Reclamation's SLWRI EIS/EIR process the legal question was raised as to whether or not any enlargement of Shasta Dam would violate California Public Resources Code (PRC) 5093.542 which sets specific bars to any further impoundment of the waters of the McCloud River.

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.

and further:

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.

In response to the legal question raised regarding PRC 5093.542 Reclamation's SLWRI EIS determined that its action alternatives were in conflict with the PRC (SLWRI FEIS 25-40). By federal Reclamation law (*section 8 of the Reclamation Act & 1992 Central Valley Project Improvement Act, sec. 3406(b) in part, Title 34 Public Law 102-575*) and the WIIN Act (*WIIN secs. 4007(b), 4009(j) and 4012*), Reclamation projects must comply with state law.





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In March of 2018, California Natural Resources Secretary John Laird sent a letter to the U.S. Senate and U.S. House opposing raising Shasta Dam:

“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.”

Secretary Laird went on to further state:

“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.”

Thereby, excluding any Shasta Dam Raise Project from receiving state funding. Additionally, because of the bar by state law, no state permits to go forward with the project can be issued.

If the State of California and the US Bureau of Reclamation both agree that any enlargement of Shasta Dam would conflict with California Public Resources Code 5093.542, how and why is Westlands Water District, an agency under state law, willfully and with aforethought trying to circumvent California law and participating in a project that seeks to violate both state and federal laws?

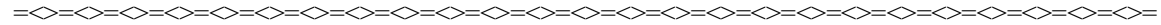
What is the legal authority for WWD acting as the lead state agency in this matter? WWD lies over 200 miles south of the proposed project area. The proposed project does not lie within WWD jurisdictional area and therefore WWD has no legal authority to conduct such a project. The only way that WWD could justify conducting this CEQA process outside of its district is if WWD deems itself a ‘state agency’, and if so, WWD is barred by California law from participating in any effort to enlarge Shasta Dam under PRC 5093.542.





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WWD does not have a legal mandate to act as Lead Agency for the Shasta Dam Raise Project. “Public Resources Code section 21067 states that the lead agency is “the public agency which has the principal responsibility for carrying out or approving a project . . . WWD will not carry out the Project, which we assume will be BOR. Nor does WWD, to our knowledge, have any discretionary permit or oversight authority over the Project. (State agencies that serve as Lead Agency would include the State Water Quality Control Board although it would be prohibited by law. BOR would be the logical choice as Lead Agency except that federal agencies are prohibited by CEQA.) Therefore, the WWD SDRP EIR review is not supported by law and is invalid.

WWD has a conflict of interest in this matter because of its ownership of land and fishing rights on the McCloud River, and its stated strong support to the raising of Shasta Dam and WWD cannot possibly act with the good faith this matter requires. This conflict of interest must be resolved before any further public funding is spent on this matter.

### Cultural Resources:

The definition of cultural resources is as follows:

**Cultural resources** are all unique and nonrenewable intangible (spiritual) and material phenomena (natural or made by humans) that are associated with human (**cultural**) activities. This includes sites, structures, and artefacts to which an individual or group attaches some value with regard to its historic, archaeological, architectural, spiritual, and human (**cultural**) development.

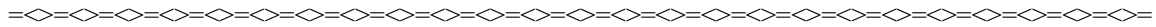
WWD relies on a flawed and incomplete *supposedly* Final EIS. Neither WWD nor Reclamation can make any claim of Less Than Significant impact to any cultural resources within the proposed project area since *NO* NHPA 106 process was ever completed during the SLWRI EIS process.

1. In the NOP, WWD misrepresents the federal EIS. The document is not a reliable basis for indicating the work to be done in this CEQA process. (“The Final SLWRI EIS and Feasibility Report are located on the Reclamation Mid-Pacific Region website at [www.usbr.gov/mp/ncao/shasta-lake.html](http://www.usbr.gov/mp/ncao/shasta-lake.html).) And WWD states that this EIS was fundamental to the funding of this initial study and that then “In March



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2018, Congress directed \$20.5 million in Water Infrastructure for Improvement to the Nation Act funding for Shasta Dam Raise Project pre-construction activities.” (NOP 1.1.1) However, this so called “Final EIS” was not complete. It did not result in a ROD or meet the basic requirements of NEPA, nor was any NHPA Section 106 ever completed. The WWT was never properly notified of the termination of consultation under NEPA that was ongoing during the creation of that document, nor was the WWT ever engaged in any NHPA Section 106 consultation during the entire process of the SLWRI FEIS. In fact, when BOR was questioned regarding 106 consultation, BOR repeatedly stated that there was no undertaking and therefore no need for 106 preparation. There was no opportunity to legally challenge these deficiencies. Use of this FEIS is misleading.

2. The most crucial matter of concern to WWT is that **NO** studies of cultural resources were done on the area affected by the Shasta Dam Raise by any government agency and the FIES cited above is devoid of facts or analysis as required by state and federal laws. The FEIS violates both as well as NEPA, and the process violated the National Historic Preservation Act and its implementing regulations. Thus, WWD cannot rely on this document. Furthermore, WWD must correct its representations to the public, government agencies, and Congress. In order to correct the misleading citations to the cultural resources section in the DEIS, cited at section 2.2.5 of the NOP, the following statement must be included: ***“No studies of cultural resources in the affected area have been conducted according to the legal requirements and therefore no conclusions can yet be made.”***
3. Table 2.2-5 is equally misleading, presented without factual basis, and fundamentally dishonest. **It too must be explicitly corrected or withdrawn.**
4. Like the other main player in the Shasta Dam Raise, the BOR, WWD has a long association with the Winnemem Wintu Tribe. WWD knows full well that there is an ancient and ongoing relationship for WWT to the area, including to WWD’s own landholdings on the McCloud River. Notwithstanding that reality, WWD has signed off on statements in the NOP that fail to recognize this reality and conveniently rely on the defective “impact statements for the 2014 SLWRI EIS.” **No studies were done. It is axiomatic that if you do not study something, you will not find anything.**



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5. **For instance, WWD describes rock outcroppings in Winnemem homelands and “in the vicinity of the McCloud River Bridge” as of paleontological and geological interest, as if they are devoid of cultural meaning.** This lack of even a bare minimum reference to reality belies the essential dishonesty of WWD’s approach to this “**study.**” And it is evidence of WWD’s conflict of interest. WWD purchased nearby land and its fishing club in the heart of Winnemem sacred sites and significant prehistoric and historic properties, knowing what it means to the tribe, and knowing it’s complex and rich cultural history. **And yet already the conclusion WWD makes is: “It is unlikely that paleontological resources of scientific or cultural significance occur in this region. Accordingly, the EIR is not anticipated to address...cultural resources.” Again, this must be corrected and the entire section of the NOP withdrawn and any reliance on the FEIS discarded as part of this CEQA process.** There is no legal basis for reliance on a defective untested federal NEPA document as the foundation for an EIR under CEQA.
  6. WWD and WWT had a series of informal meetings on related matters and at those meetings it was made clear to WWD that the “playing field” in this matter was manifestly unfair. WWD is a wealthy water district. And it is being made all the wealthier by taking the water stored in Shasta Lake for its commercial use. WWT, on the other hand, was displaced and impoverished by the creation of Shasta Lake. And yet, now, in this “initial study” that is richly funded by U.S. tax payers, WWD asks the tribe to put its time, resources, and considerable expertise to work without any compensation in order for the water district to carry out its predetermined agenda. This must be corrected. Grant funds from the public for this study must be shared with WWT to assist WWT in its participation if it is to have any credibility. While this may not be legally required, most historic preservation regulations do provide for this contingency. If this is not done, the lack of assistance should be noted in the final CEQA document or, again, WWD’s conflict of interest prevails.
  7. WWT is the group most adversely affected and aggrieved by this project and it must be compensated for its time and effort to engage in the study process. To do any less, given the history of this matter, is immoral.
  8. We include here, by reference, the comments by Chief Caleen Sisk at the December 12, 2018 scoping meeting on this matter.



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([https://www.youtube.com/watch?v=CBZjZJMal4&index=5&list=PLmRUolz66Oswm8RzqvTHN\\_YJCy-jQ\\_I](https://www.youtube.com/watch?v=CBZjZJMal4&index=5&list=PLmRUolz66Oswm8RzqvTHN_YJCy-jQ_I))

9. We also include by reference all comments made by organizations and individuals who include the interests of the WWT by reference or by including the signature of Chief Sisk as well as, by attachment, the comments made on behalf of the WWT on the Fish Passage DEIS. This is relevant because all the same information, analysis, and arguments apply here in this matter and WWD should take them into consideration if this CEQA process if it intends to understand the meaning of the cultural and natural resources in the affected area.
10. *Again, The Winnemem Wintu Tribe hereby incorporates by reference (see link below) every recital, exhibit, attachment, argument, statement and all other information contained within the Winnemem Wintu Tribe's comments submitted to Reclamation regarding Reclamation's SWLRI DFR, and hereby submits that each and every item contained therein is an actionable item within the scope of this WWD SDRP CEQA preparation and must be addressed wholly and individually in-part within WWD's CEQA Draft Environmental Impact Report (DEIR).*  
[https://www.usbr.gov/mp/nepa/includes/documentShow.php?Doc\\_ID=22627](https://www.usbr.gov/mp/nepa/includes/documentShow.php?Doc_ID=22627)  
Winnemem Wintu Tribe comments on Reclamation's SWLRI Draft Feasibility Report (DFR) *ibid*.

### SUMMARY:

The cumulative impacts of any new enlargement of Shasta Dam will most certainly exponentially compound the harm done to the Winnemem Wintu Tribe from the initial construction of the dam, and will most certainly extirpate rare plants and rare endangered species only found in the watershed affected by Shasta Dam.

The proposed enlargement of Shasta Dam is in direct violation of California state law, and Federal law which requires Reclamation to comply with state law.

How is WWD, a San Joaquin Valley district even considered a legitimate lead agency for any CEQA project over 200 miles away from its district and jurisdiction?



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The Reclamation SLWRI EIS is fatally flawed and incomplete. It cannot be relied upon as the basis for any CEQA EIR document.

WWD must proclaim: ***“No studies of cultural resources in the affected area have been conducted according to the legal requirements and therefore no conclusions can yet be made.”*** And the entire section of the NOP regarding cultural resources must be withdrawn and any reliance on the SLWRI FEIS discarded as part of this CEQA process.

Lastly, there is a wealth of information available on the relevant cultural resources. These documents as well as materials provided to the BOR for its incomplete EIS for the Shasta Dam raise will be made available as part of the AB 52 and other legally mandated processes.

Please add each individual below to your mailing list and notification server for any and all updates to this CEQA process.

Caleen Sisk, Chief  
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