

State Water Resources Control Board

JAN 14 2019

Mr. Jose Gutierrez
Westlands Water District
3130 N. Fresno Street
P.O. Box 6056
Fresno, CA 93703-6056

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

COMMENTS ON WESTLANDS WATER DISTRICT'S INITIAL STUDY/NOTICE OF PREPARATION FOR THE SHASTA DAM RAISE PROJECT; SHASTA COUNTY

Dear Mr. Gutierrez:

This letter provides State Water Resources Control Board (State Water Board) comments in response to Westlands Water District's (WWD) November 30, 2018 Notice of Preparation (NOP) of a Draft Environmental Impact Report (DEIR) for the Shasta Dam Raise Project (Project). The State Water Board understands WWD held a public scoping meeting for the Project on December 12, 2018 in Redding, California, and is requesting comments by January 14, 2019. The State Water Board appreciates the opportunity to comment on the NOP and provide input on the proposed Project and alternatives.

The NOP contemplates a "range" of six action alternatives that primarily consist of raising the crest height of Shasta Dam between 6.5 and 18.5 feet. The increased height and ancillary features would be expected to increase storage capacity at Shasta Reservoir between 256,000 acre-feet to 634,000 acre-feet, depending on the selected alternative. Construction of any of the alternatives would require modifications to existing dam infrastructure, including spillway gates, outlet works, penstocks, and the water temperature control device. Additionally, the alternatives would require intensive construction activities not directly associated with dam operation, including relocation or modification of recreation facilities, wastewater treatment facilities, bridges, roads, and railroads.

California Wild and Scenic Rivers Act

The California Wild and Scenic Rivers Act (Pub. Res. Code, § 5093.50 et seq.) includes a section specifically applicable to the McCloud River. Subdivision (c) of section 5093.542 of the Public Resources Code provides:

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.

WWD is an agency of the state. (Wat. Code, §§ 37822, 37823.) Acting as lead agency under the California Environmental Quality Act (CEQA) for this Project involves the assistance or cooperation with the planning or construction of water impoundment facilities. Cost sharing in the Project, including cost sharing in the preparation of the environmental documentation under CEQA needed for state or local approvals, likewise would involve assistance or cooperation in the planning or construction of the facilities. If those facilities could adversely affect the free-flowing character of the McCloud River, WWD's participation is prohibited. A similar issue arises concerning the effect of the action alternatives on the McCloud River wild trout fishery.

All alternatives identified in the NOP, except for the No Project Alternative, would increase the storage capacity of Shasta Reservoir. When additional water is impounded using that increased storage capacity, the areas affected will include the reach of the McCloud River protected under section 5093.542 of the Public Resources Code, converting the affected area from a free-flowing stretch of river to impounded waters. The action alternatives "could have an adverse effect on the free-flowing condition of the McCloud River" within the meaning of section 5093.542 of the Public Resources Code.

The NOP lists the impact on McCloud River free-flowing conditions as "TBD." (NOP, p. 2-32). It does not appear, however, that postponing a finding on this impact makes the statutory prohibition inapplicable. Section 5093.542 prohibits assistance in the "planning" of facilities that "could have an adverse effect."

In addition to prohibiting cooperation in the planning of a project that could adversely affect the free-flowing condition of the McCloud River, section 5093.542 of the Public Resources Code prohibits assistance or cooperation by "license, or otherwise." This language bars the State Water Board and other agencies of the state from issuing any permit or other approval for a project that could adversely affect the free-flowing character of the McCloud River or its wild trout fishery. Necessary permit approvals for the State Water Board includes approvals under sections 401 and 402 of the Clean Water Act and time extensions for U.S. Bureau of Reclamation's (Reclamation) water right permits, as discussed below.

If WWD has evidence indicating that the proposed Project can be constructed and operated without adverse effects on the free-flowing character of the McCloud River or on its wild trout fishery, the State Water Board would be happy to review it. Unless and until the issue is resolved, however, it would be inappropriate for WWD to proceed with preparation of the DEIR.

Water Right Time Extensions

If the proposed Project could proceed in compliance with the Wild and Scenic Rivers Act, the proposed Project would require time extensions for several water right permits. Water diversion and storage at Shasta Dam is regulated by the State Water Board pursuant to Reclamation water right Permits 12720, 12721, 12722, 12723, and 12724 (Applications 5625, 5626, 9363, 9364, and 9365, respectively). Reclamation's water right permits include a deadline to complete construction work by December 1, 1985, and a deadline to complete application of the water to beneficial use by December 1, 1990. Construction activities involving expanding the capacity of Shasta Reservoir, which would allow for increase in beneficial use under the permits, cannot commence unless and until the State Water Board approves extensions of time for Reclamation's water rights. (Wat. Code, §§ 1397, 1398.) Reclamation previously filed petitions with the State Water Board requesting extensions of time until December 2030 to complete

construction and use pursuant to the water right permits. The petitions have been publicly noticed and numerous protests of the proposed time extensions remain active. CEQA compliance is also necessary before the State Water Board can approve the time extensions.

Water Quality Approvals

In addition to the time extensions, the proposed Project and alternatives would impact Waters of the United States and most likely require a Clean Water Act section 404 Dredge and Fill Permit from the United States Army Corp of Engineers. In addition, Section 401 of the Clean Water Act (33 U.S.C. § 1341) requires every applicant for a federal license or permit which may result in a discharge into navigable waters to provide the licensing or permitting federal agency with certification that the project will be in compliance with specified provisions of the Clean Water Act, including water quality standards and implementation plans promulgated pursuant to section 303 of the Clean Water Act (33 U.S.C. § 1313).

Clean Water Act section 401 directs the agency responsible for water quality certification (certification) to prescribe effluent limitations and other limitations necessary to ensure compliance with the Clean Water Act and with any other appropriate requirements of state law. In this instance, the State Water Board is the state agency responsible for certification. (Wat. Code, § 13160; see Cal. Code Regs. tit. 23, § 3855, subd. (b)(1)(B).) In taking a certification action, the State Water Board must either: 1) issue an appropriately conditioned certification; or 2) deny the certification request. (Cal. Code Regs., tit. 23, § 3859.)

In addition, the Project would need a National Pollutant Discharge Elimination System (NPDES) permit under Clean Water Act section 402 for storm water discharges from construction activities. In California, the NPDES program is administered by the State Water Board and Regional Water Quality Control Boards (Regional Water Boards). (Wat. Code, § 13370 et seq.) To authorize storm water discharges from construction activity, a project proponent must apply for coverage under the Construction General Permit or apply for a separate NPDES permit.

Update of the Bay-Delta Plan

The State Water Board is in the process of updating the Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Bay-Delta Plan) to protect beneficial uses in the Bay-Delta watershed. The Sacramento/Delta update to the Bay-Delta Plan is focused on the Sacramento River and its tributaries, Delta eastside tributaries, Delta outflows, and interior Delta flows. On July 6, 2018, the State Water Board released a Framework providing additional detail about potential updates to flow requirements for the Sacramento River, its tributaries, and the Delta and its tributaries (Framework). The Framework describes proposed amendments to the Bay-Delta Plan that will be evaluated in an upcoming draft Staff Report. The proposed amendments include new inflow objectives, a new cold water habitat objective, modified Delta outflow objectives, and modified interior Delta flow objectives. All water users throughout the Sacramento/Delta watershed, including diverters upstream of dams and in the Delta, would be subject to the proposed inflow, cold water habitat, and Delta outflow requirements for the Sacramento/Delta watershed (with the exception of *de minimis* diversions). Accordingly, any EIR prepared for the Project should evaluate flow regimes consistent with potential updates to the Bay-Delta Plan, including a flow regime within the range of 45 to 65 percent of unimpaired flow below Shasta Dam that is consistent with the implementation provisions described in the Framework, as well as other provisions consistent with the proposed cold water habitat, Delta outflow, and interior Delta flow objectives.

Water Quality Issues

A number of different water quality impacts would also be expected to occur due to sediment discharges into Lake Shasta from increased shoreline erosion. Mercury, copper, zinc, and other pollutants associated with sediment would increase and impact already elevated concentrations in Lake Shasta, Keswick Reservoir, and the downstream Sacramento River. Elevated metals concentrations would adversely affect aquatic life, adversely affect source water filtration ability for drinking water treatment plants, and limit regulatory compliance options at downstream wastewater treatment plants. Changes in flow regimes would impact dilution of legacy mining discharges and increase hydromodification in the lower reaches of tributary watersheds. These preceding impacts could be significant, although partial mitigations could likely be devised. Additional water quality concerns are identified in a September 11, 2013 letter the Central Valley Regional Water Quality Control Board (Central Valley Regional Water Board) submitted to Reclamation, and is enclosed for your reference.

If you have any questions regarding this letter or the enclosure, please contact Mr. Erik Ekdahl, Deputy Director of the Division of Water Rights at the State Water Board, by email at erik.ekdahl@waterboards.ca.gov or by phone at (916) 341-5316, or Mr. Clint Snyder, Assistant Executive Officer at the Central Valley Regional Water Board, by email at clint.snyder@waterboards.ca.gov or by phone at (530) 224-3213.

Sincerely,

ORIGINAL SIGNED BY

Eileen Sobeck
Executive Director

Enclosure: September 11, 2013 Letter from Pamela C. Creedon of the Central Valley Regional Water Quality Control Board to Katrina Chow of the Bureau of Reclamation:
Comments on the Shasta Lake Water Resources Investigation Draft Environmental Impact Statement, Shasta County

cc:	Mr. Patrick Pulupa, Executive Officer Central Valley Regional Water Quality Control Board 11020 Sun Center Drive, #200 Rancho Cordova, CA 95670-6114	Mr. Tomas Torres, Director U.S. Environmental Protection Agency Region 9, Water Division 75 Hawthorne Street San Francisco, CA 94105
	Mr. Michael Ryan, Acting Regional Director Bureau of Reclamation Mid-Pacific Regional Office Federal Office Building 2800 Cottage Way Sacramento, CA 95825	