

CALIFORNIA STATE LANDS COMMISSION

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Established in 1938

October 5, 2020

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File Ref: SLWRI

David Brick
Bureau of Reclamation
Northern California Area Office
16349 Shasta Dam Blvd.
Shasta Lake CA 96019-8400

VIA ELECTRONIC MAIL ONLY (dbrick@usbr.gov)

**Subject: Draft Supplemental Environmental Impact Statement (SEIS) for the
Shasta Lake Water Resources Investigation (SLWRI), Shasta County**

Dear Mr. Brick:

The California State Lands Commission (Commission) staff has reviewed the subject SEIS for the SLWRI (the enlargement of Shasta Dam and Lake [Project]), which is being prepared by the U.S. Bureau of Reclamation (Reclamation). Reclamation, as the federal agency proposing to carry out the Project, is the lead agency under the National Environmental Policy Act (42 U.S.C. § 4321 et seq.). Commission staff understand that Reclamation released a Final Feasibility Report and Environmental Impact Statement (FEIS) on July 29, 2015, which is now before Congress.

The Commission is a trustee agency for projects that could directly or indirectly affect sovereign land and their accompanying Public Trust resources or uses (Cal. Code Regs., tit. 14, § 15386). The Project is of state-wide concern and may indirectly affect downstream State sovereign lands and resources; therefore, the Commission will act as a trustee agency for the Project.

Commission Jurisdiction and Public Trust Lands

The Commission has jurisdiction and management authority over all ungranted tidelands, submerged lands, and the beds of navigable lakes and waterways. The Commission also has certain residual and review authority for tidelands and submerged lands legislatively granted in trust to local jurisdictions (Pub. Resources Code, §§ 6009, subd. (c); 6009.1; 6301; 6306). All tidelands and submerged lands granted or ungranted, as well as navigable lakes and waterways, are subject to the protections of the common law Public Trust Doctrine.

Commission staff has determined, based on information currently known to staff, that the Project will not occur on lands under the jurisdiction of the Commission. However, Project construction may indirectly affect State sovereign and Public Trust lands and resources downstream and pertaining to the Sacramento River and adjoining tributaries, and perhaps more indirectly the Delta and San Francisco Bay. On March 13, 2018, the then California Secretary of the California Natural Resources Agency wrote a letter to Congressional leaders expressing opposition to the Project and referencing California Public Resources Code section 5093.542, prohibiting state agencies and departments from assisting in the Project in any way. The Commission concurs with former Secretary Laird's letter. However, as a trustee agency and in the interests of ensuring a full and thorough analysis of Project impacts, the Commission respectfully submits the following comments.

Issues Addressed in the SEIS

The FEIS (inclusive of the SLWRI Feasibility Report) presented the results of planning, engineering, environmental, social, economic, and financial studies and potential benefits and effects of alternatives plans for the SLWRI project, which evaluated the potential environmental effects of alternative plans to enlarge Shasta Dam and Lake to:

- Increase anadromous fish survival in the upper Sacramento River
- Increase water supplies and water supply reliability for agricultural, municipal, industrial, and environmental purposes
- Address related water resource problems, needs, and opportunities.

The SEIS has been prepared to respond to issues identified by U.S. Army Corps of Engineers (USACE) and the Environmental Protection Agency (EPA) on the previous EIS, to update operations and modelling to the latest regulatory requirements, and to update information included in the 2015 FEIS that is relevant to environmental concerns. Therefore, the SEIS discusses the following:

- Supplemental Information on Impacts to Wetlands and Other Waters of the U.S. (Chapter 2)
- Supplemental Information on Stormwater and Other Point-Source Discharges (Chapter 3)
- Supplemental Information on Shasta Dam Operations and Modeling (Chapter 4)
- Wild and Scenic River Considerations for McCloud River (Chapter 5)

Chapter 3, which relates to the potential for downstream sedimentation or contamination, is the only chapter directly applicable to Commission jurisdiction. However, as noted above, Commission staff is providing comments as a trustee agency.

Environmental Review

Commission staff requests that Reclamation consider the following comments on the SEIS to ensure that impacts to Public Trust resources are adequately analyzed.

1. Wetlands and Other Waters of the U.S

Commission staff suggests that a map reflecting the Preliminary Jurisdictional Determination dated April 8, 2020, from the USACE Sacramento District and an impact map using that same data, be included as figures in the SEIS or as an Appendix to more clearly display the wetlands/waters impacted by Project construction.

Chapter 2 of the SEIS discusses potential impacts to waters of the U.S. (WOTUS). On page 2-6 the draft SEIS states “The SLWRI FEIS previously identified 31 acres of wetlands and 49 acres of other WOTUS to be converted into lacustrine habitat with the raising of Shasta Dam, resulting in a net loss of approximately 31 acres of wetlands and 49 acres of riverine waters into lacustrine habitat.” However, the draft SEIS does not further discuss these impacts “[b]ecause the construction process to raise Shasta Dam will require no placement of dredge or fill material into wetlands or other WOTUS, that process and the resultant conversion of some habitats into lacustrine habitat does not require consideration of the CWA 404(b)(1) guidelines.”

The FEIS included Mitigation Measure Bot-4, which requires the preparation of a wetland mitigation plan to mitigate impacts to wetlands and waters within the inundation area (conversion of wetlands/waters into lacustrine habitat) and the relocation areas. The measure states that “Reclamation will prepare a conceptual wetland mitigation plan following current USACE guidance and requirements.” Please explain how the mitigation plan will address the conversion of wetland/waters (and the subsequent eradication of existing habitat within those wetlands/waters) within the inundation area, to assure that those impacts resulting from the expansion of Shasta Lake are mitigated as adequately as the impacted wetlands/water covered in the 404(b)(1) analysis, using the guidelines outlined in “*Subpart J—Compensatory Mitigation for Losses of Aquatic Resources*.” Commission staff requests that additional discussion of this issue be included in the SEIS.

2. Supplemental Information on Stormwater and Other Point-Source Discharges

In the FEIS’s response to comments made by the Central Valley Regional Water Quality Control Board (CVRWQCB-3) regarding sedimentation, Reclamation stated that “[a]t this point in Reclamation’s planning process there is substantial uncertainty with respect to the specific location and types of mitigation activities that may be appropriate and or effective.” Chapter 3 of the SEIS, *Supplemental Information on Stormwater and Other Point-Source Discharges*, provides some basic information regarding the preparation of a Stormwater Pollution Prevention

Plan, Spill Prevention and Control Plan, and Erosion and Sediment Control Plan; however, specific information is still lacking. Therefore, the SEIS does not fully address Commission staff's concerns for indirect effects downstream of the Project area. Commission staff suggests that more detail be included in the SEIS to facilitate a better understanding of Reclamation's plans to mitigate potential impacts associated with the potential for downstream sedimentation and contamination.

3. Wild and Scenic River Considerations for McCloud River

Although the McCloud River was been determined eligible for listing under the Federal Wild and Scenic Rivers Act (Federal WSRA; Public Law 90-542, as amended; 16 U.S.C. §§ 1271-1287), the California legislature instead passed an amendment to the California Wild and Scenic Rivers Act to protect the river's wild trout fishery below McCloud Dam (Pub. Resources Code, § 5093.542). The U.S. Forest Service evaluation conducted in 1994/95 stated that the lower McCloud River provides outstanding cultural, fisheries, and geologic values, and its corridor has been classified as a highly sensitive visual area.

The SEIS (page 5-19) states that existing data shows that over the course of an average year, the transition from lake to river expands up to about 1.7 miles above the McCloud River bridge due to changing water levels in Shasta Lake, to the full pool elevation of 1,070 feet mean seal level (msl), which is the downstream boundary of Segment 4 (lower segment of the McCloud River). The preferred alternative (CP4, CP4A) would reduce the total length of the McCloud River that is eligible for wild and scenic river designation by about 3,550 feet, increase the maximum elevation of the lake to 1,090 feet msl, and increase the inundated area by approximately 60 acres, inclusive of 20 feet on each side of the river.

Since the basis for the river's eligibility for the designation includes many resources, Commission staff believes that a discussion of those resources is applicable. For example, the higher lake levels would affect the habitat available to several salmonid species and other aquatic organisms. In addition, the wider affected river corridor would result in greater effects on cultural resources as large portions of three recorded sites and known Wintu villages would become inundated. The FEIS concludes these impacts remain significant and unavoidable and that with respect to cultural sites, mitigation is not feasible.

While we recognize this is a federal Project and document, it is important that Reclamation recognize that California takes its obligations to the indigenous people of the state seriously and expects its federal partners to do so as well. Commission staff disagrees with Reclamation's conclusion that there are no feasible measures that could lessen, avoid, or compensate Native American Tribes for the unavoidable impacts to sacred sites and other cultural resources and lifeways. Staff encourages Reclamation to actively re-engage federally and non-federally recognized Tribes in *meaningful* government to government

consultation pursuant to the Section 106 process and strive to develop and commit to measures that would lessen the blow to Native cultural sites from flooding. Measures could include, for example, committing to various local co-management efforts that would more actively involve Native partners in fisheries and ongoing resource management programs; developing and implementing educational and training opportunities in resource management for Native youth to boost professional and economic opportunities; identifying, considering, and negotiating opportunities for land returns; and other mitigation ideas that are both feasible and just in response to a Project that will significantly adversely affect Tribal resources and values. Commission staff questions the benefits of FEIS and SEIS certification and Reclamation's plans to raise the level of Shasta Lake.

Thank you for the opportunity to comment on the SEIS. As a trustee agency, Commission staff requests that you keep us advised of changes to the Project Description and all other important developments. Please send additional information on the Project to the Commission staff listed below as the SEIS is finalized.

Please refer questions concerning environmental review to Cynthia Herzog, Senior Environmental Scientist, at (916) 574-1310 or cynthia.herzog@slc.ca.gov or Joseph Fabel, Staff Attorney, at (916) 574-0964 or joseph.fabel@slc.ca.gov.

Sincerely,



Eric Gillies, Acting Chief
Division of Environmental Planning
and Management

cc: S. Blackmon, Commission
J. Fabel, Commission
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N. Lee, Commission