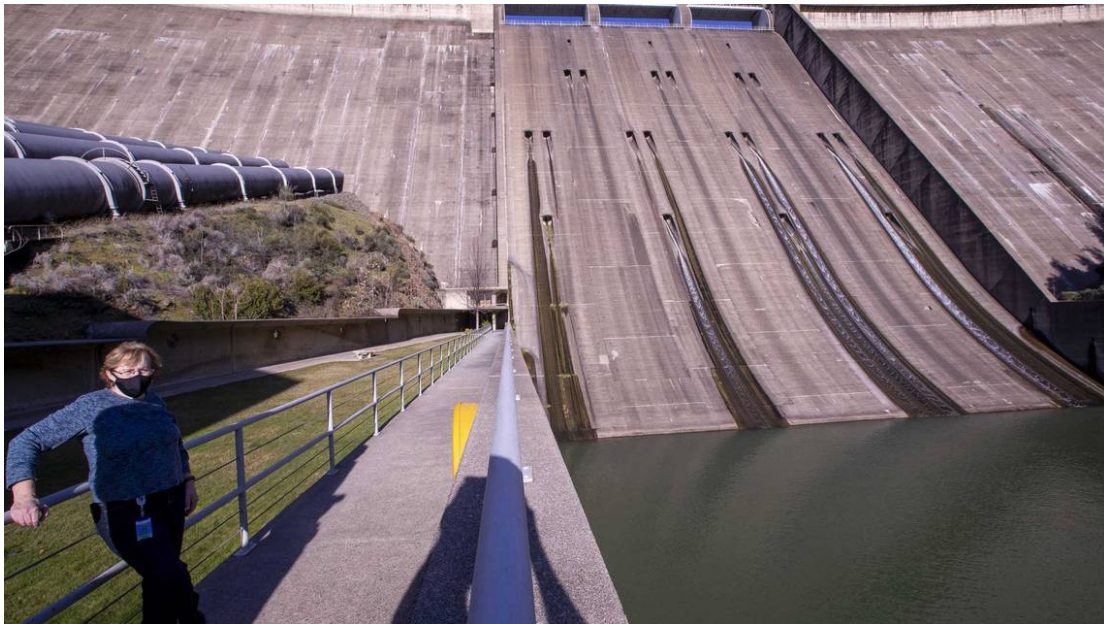




Viewpoints

This is the water question that California politicians keep refusing to answer

*Opinion by Thomas Birmingham Special to the Sacramento Bee
August 06, 2023 5:30 a.m.*



Shasta Dam stands 602 feet tall. Since its completion in 1945, the dam has blocked Chinook salmon from returning upstream to the cold spring-fed streams near Mount Shasta where they once spawned. ALLEN J. SCHABEN Los Angeles Times

In 1980, Congress enacted Public Law 96-375, authorizing the Secretary of the Interior to study the feasibility of enlarging Shasta Dam. Every study the Bureau of Reclamation has conducted under that authority has concluded that enlarging Shasta Dam would have multiple benefits.

Most recently, in 2020, the Bureau of Reclamation concluded that enlarging Shasta Dam 18.5 feet would create an additional 634,000 acre-feet of storage for environmental and consumptive water uses; improve water supply reliability for environmental and consumptive uses; improve water temperatures and quality below the dam for Chinook salmon survival; improve hydro-electric generation; and improve flood control.

Enlarging the Shasta Dam is not a partisan issue. The 1980 legislation, House Resolution 5278, had three cosponsors: Representatives Harold Terry “Bizz” Johnson, Tony Coelho and Vic Fazio, all California Democrats. In August 2000, the state and federal governments, under the leadership of Gov. Gray Davis and Interior Secretary Bruce Babbitt, both Democrats, proposed in the California Bay-Delta Program (CALFED) Programmatic Record of Decision enlarging Shasta, as such an expansion would “increase the pool of cold water available to maintain lower Sacramento River temperatures needed by certain fish and provide other water management benefits, such as water supply reliability.”

Current Democrat members of the California delegation, including Sen. Dianne Feinstein and Representative Jim Costa, consistently express support for enlarging Shasta Dam.

State law does not prohibit enlarging Shasta Dam. In fact, the only limitation in the Wild and Scenic River Act provides that “no department or agency of the state shall assist or cooperate . . . in the planning or construction of any dam, (or) reservoir, . . . that could have an adverse effect on the free-flowing condition of the McCloud River or on its wild trout fishery.”

Therefore, the question is this: Would enlarging Shasta Dam 18.5 feet adversely affect the free-flowing condition of the McCloud River or on its wild trout fishery?

This question has never been evaluated by any state agency. In 2015, when the late Anthony Saracino, a California water policy expert, proposed the California Water Commission analyze the question, he was forced to resign from the commission. In 2019, when Westlands Water District began preparing an environmental impact report to evaluate the issue, then Attorney General Xavier Becerra sued, asserting that even analyzing the question through a public environmental study violated state law.

Enlarging Shasta Dam 18.5 feet would periodically inundate only an additional 3,500 feet of the McCloud River. This is less than 3% of a 24-mile-reach between Shasta Lake and the McCloud Dam, which diverts a substantial portion of the McCloud River flow into the Pitt River watershed for hydro-electric generation. Impacts of the Shasta Dam on the McCloud River wild trout fishery will persist whether or not the dam is enlarged, and despite those impacts, the McCloud River above Shasta Lake supports an excellent wild trout fishery.

It is difficult to imagine how periodically inundating an additional 3,500 feet could adversely affect a fishery that occupies a 24-mile reach above the existing reservoir. But it’s easy to understand, as acknowledged by the CALFED Record of Decision, how enlarging the dam would benefit fish species below the reservoir. The extreme, variable weather patterns caused by climate change demand California manage its water resources efficiently. Assertions that there is insufficient runoff to fill an enlarged reservoir ignore recent hydrology.

Had Shasta Dam been enlarged in 2015, the additional 634,000 acre-feet of storage would have filled in 2017, 2019 and 2023 without any negative impacts on downstream fish populations, water quality or other diversions. To the contrary, this additional, precious water would have benefited downstream fish populations, water quality and consumptive water users in nearly every region of the state.

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<https://www.sacbee.com/opinion/op-ed/article277639943.html>

FOR addendum: Mr. Birmingham’s legal conclusions of law omit key provisions of the California Wild & Scenic Rivers Act and mischaracterizes the meaning of its language.

For example, Mr. Birmingham fails to mention the provision of the California Wild & Scenic Rivers Act that prohibits reservoir construction on the portion of the McCloud River that would be inddated: “§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...” (emphasis added)

It may be helpful to the ruling of the Shasta County Court in the PEOPLE VS. WESTLANDS WATER DISTRICT Case Number: 192487, Tentative Ruling on Preliminary Injunction, Shasta County Superior Court. (August 2019):

“The plain language of the statute prohibits departments or agencies of the State from financing, facilitating, or even cooperating with any other government agencies in the planning or construction of any 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 prohibition must be read in the context of the entire statute, whose stated policy objectives are to preserve the extraordinary scenic, recreational, fishery, or wildlife values of protected rivers in their free-flowing state; and, with respect to the McCloud River, to protect its wild trout waters by managing the river resources in its existing natural condition. See Pub. Resources Code §§ 5093.50, 5093.542.”

“The Shasta Dam by its very nature can limit the McCloud River’s free-flowing state by converting freeflowing waters into reservoir waters. Even the language of the statute confirms this point, as section 5093.542, subdivision (c) begins, “Except for participation by the Department of Water Resources in studies involving the technical and economic feasibility of enlargement of Shasta Dam...” If the State Legislature did not believe that the Shasta Dam could have an impact on the McCloud River’s free-flowing state, then it would not have felt the need to carve out an exception for studies performed by the Department of Water Resources involving enlargement of the Shasta Dam.”

“Westlands contends that it is not in violation of the Act, as it has not yet made an independent determination that raising the Shasta Dam would adversely affect the McCloud River. The plain language of the statute does not require a public agency to make its own independent findings before the prohibition applies. Rather, section 5093.542’s prohibition is absolute regardless of

agency findings. It mandates that state departments and agencies not assist or cooperate with other agencies on a dam raise project that could adversely affect the free-flowing condition or wild trout fisheries of the McCloud River. In other words, the mere possibility of an adverse impact is enough to trigger the statute. This reading of the statute makes sense, as the language is to be read in the context of the statute's policy, which is to protect the McCloud River's wild trout waters by managing the river resources in its existing natural condition. See Pub. Resources Code § 5093.542.

“Here, several federal and state agencies have already concluded that raising the Shasta Dam will have some adverse impacts on the free-flowing condition and wild trout fisheries of the McCloud River. The Court need not accept the conclusions in those reports as true to recognize that section 5093.542 applies. Rather, the conclusions establish that the possibility of adverse impacts exists. In other words, the dam raise project could adversely affect the free-flowing condition or wild trout fisheries of the McCloud River. No independent CEQA process by Westlands is needed to reach this conclusion.”