



# The Facts about Raising Shasta Dam

November 30, 2023



Shasta Dam is the fourth highest dam in California<sup>1</sup> and its 4.55 million acre-foot reservoir is the largest in the state.<sup>2</sup> The dam captures water from three rivers (the upper Sacramento, McCloud, and Pit),<sup>3</sup> blocking migratory fish access and affecting downstream flows in the process. Constructed and operated by the U.S. Bureau of Reclamation, the Shasta Dam and Reservoir is the cornerstone of the giant Central Valley Project (CVP), which provides irrigation and drinking water for much of California's Central Valley and parts of, and valleys just south of, the San Francisco Bay Area.<sup>4</sup>

## Reclamation 2015 Feasibility Report and EIS

In the Shasta Lake Water Resources Investigation (SLWRI) 2015 final Feasibility Report and 2014 Final Environmental Impact Statement (FEIS), the Bureau of Reclamation (Reclamation, USBR, or the Bureau) identified a plan with the greatest level of National Economic Development (NED) benefits as one including an 18.5-foot raise of Shasta Dam,<sup>5</sup> which would increase water storage capabilities behind the dam by about 13%.<sup>6</sup> This alternative, identified as the preferred alternative,<sup>7</sup> was advertised to improve conditions in the Sacramento River for threatened and endangered salmon and steelhead and increase the state's overall water supply reliability.<sup>8</sup> The Bureau released a final Feasibility Report and environmental impact statement (FEIS) which did not recommend any action (dam) alternative because of serious outstanding considerations,<sup>9</sup> including: (1) the Bureau's desire to have upfront funding from non-federal cost-sharing partners,<sup>10</sup> (2) concerns by CVP contractors about CVP facilities serving non-CVP contractors,<sup>11</sup> (3) California law prohibiting the expansion of Shasta Reservoir,<sup>12</sup> (4) applicability of state environmental law to the project,<sup>13</sup> and (5) process considerations. There has been no Record of Decision (ROD) for the FEIS,<sup>14</sup> although a Supplemental FEIS was prepared in 2020 (to be discussed later.)

## Costs, Benefits, and Cost-Sharers

Cost and Benefits – In 2015, raising Shasta Dam by 18.5 feet was estimated to cost nearly \$1.4 billion 2014 dollars,<sup>15</sup> approximately equal to the unpaid reimbursable debt for the CVP.<sup>16</sup> Reclamation's 2019 estimate was \$2 billion in 2019 dollars. Reclamation's final feasibility report allocates nearly 50% of the dam-raise cost to providing salmon benefits,<sup>17</sup> which means that nearly 50% of the dam-raise costs could be borne by American taxpayers and not the water contractors who directly benefit from the dam raise.<sup>18</sup> The U.S. Fish & Wildlife Service (USFWS) strongly questioned the Bureau's claim that raising the dam will benefit salmon.<sup>19</sup>

Water Yield – The 18.5-foot raise will increase the reservoir's capacity by 634,000 acre-feet.<sup>20</sup> But the average increased deliveries provided by the enlarged reservoir by the Reclamation preferred alternative are only 51,300 acre-feet<sup>21</sup> (or 0.7% of CVP annual deliveries or a little more than 1/10<sup>th</sup> of 1% of the state's annual developed water use<sup>22</sup>). To put this in perspective, California's urban water users saved, in three months in the summer of the drought year 2015, more than 8 times the amount of the dam raise's average annual water yield (increased deliveries).<sup>23</sup> Of course, the Bureau admits that hydrology, climate change, water system operations, water supply reliability and water demand are all "significant uncertainties" in regard to the project's actual yield of water.<sup>24</sup>

Water Contracts – There are no identified specific beneficiaries of the project, but the Bureau speaks of selling the additional supply to CVP contractors and even to State Water Project contractors,<sup>25</sup> an eye opener to CVP contractors.<sup>26</sup> Most of the increased supply is expected to be sold to water contractors south of the Delta.<sup>27</sup> Easing delivery constraints through the Delta by routing Sacramento River flows through proposed tunnel or tunnels

underneath the Delta increases the utility of the dam raise.<sup>28</sup> The Bureau's previous study of the Shasta Dam raise was shelved when voters rejected the proposed Peripheral Canal in 1982.

**Non-Federal Cost-Sharing Partners** – California law prohibits the dam raise by not allowing the creation of an expanded reservoir that would inundate free-flowing sections of the McCloud River, or even further inundate the McCloud arm of Shasta Reservoir upstream of the McCloud River Bridge.<sup>29</sup> The Bureau's 2015 Final Feasibility Report announced that they would require cost-sharing partners,<sup>30</sup> and in 2016 Congress created a special authorization process that required at least a 50% non-federal contribution from cost-sharing partners.<sup>31</sup> No cost-sharing partners applied for Proposition 1 water storage funding from the California Water Commission as provisions in the bond made such grants for projects in conflict with the California and National Wild and Scenic Rivers Acts ineligible.<sup>32</sup> Likely potential governmental cost-sharing partners are prohibited by California state law from assisting and cooperating with federal agencies in reservoir expansion projects that could adversely affect free-flowing reaches of the McCloud River or wild trout fishery.<sup>66</sup>

### **Significant & Unavoidable Impacts**

The Bureau's 2014 FEIS admits to many significant and unavoidable environmental impacts that cannot be mitigated.<sup>33</sup> In addition, there are serious concerns about the validity of many of the Bureau's assumptions. Significant impacts and concerns include:

**Threatened & Endangered Salmon and Steelhead** – Even though the dam raise is proposed by the Bureau to supposedly improve conditions in the Sacramento River for threatened and endangered salmon and steelhead, the U.S. Fish & Wildlife Service (USFWS) said that the claimed benefit to salmonids was not "substantial" downstream of the Red Bluff pumping plant and "only provides minimal benefit" for spring and winter-run chinook salmon upstream. However, the proposed action, "by further restricting high water flows will result in additional losses of salmonid rearing and riparian habitat and adversely affect the recruitment and natural succession of riparian habitat along the Sacramento River and bypasses." The Service "was unable to support the adoption of any of the proposed [dam-raise] alternatives."<sup>34</sup> The USFWS also noted that improving the dam's existing temperature-control device, restoring downstream spawning gravel and rearing habitat, improving fish passage, increasing minimum flows, and screening water diversions all would increase salmon survival more than the dam raise.<sup>35</sup>

**Native American Cultural Heritage** – The Bureau admits that the dam raise and reservoir expansion will have "disproportionally high" impacts on Native Americans, specifically the Winnemem Wintu Tribe.<sup>36</sup> The Tribe lost most of their traditional homeland under the existing reservoir.<sup>37</sup> Raising the dam will drown cultural and sacred sites still used by the Winnemem to this day.<sup>38</sup>

**National Forest Lands & Infrastructure** – Raising Shasta Dam and enlarging its reservoir would drown more than 5,600 acres<sup>39</sup> of private and public lands, most within the Whiskeytown-Shasta-Trinity National Recreation Area, which is managed by the U.S. Forest Service within the Shasta – Trinity National Forest for public recreation and conservation.<sup>40</sup> The dam raise would also require the relocation of more than six miles of public roads, the relocation or modification of five bridges, dozens of recreation facilities (marinas, campgrounds, etc.), and utilities and wastewater systems.<sup>41</sup>

**Wild & Scenic Rivers** – Expanding Shasta Reservoir would flood upstream rivers and streams, including the McCloud River, which is protected under the California Wild & Scenic Rivers Act.<sup>42</sup> The expanded reservoir would also flood segments of the McCloud and upper Sacramento Rivers identified by the Forest Service as eligible for protection in the National Wild & Scenic Rivers System.<sup>43</sup> Not only would the dam raise flood these important river segments, it would harm the river's outstandingly remarkable scenic, recreational, wild trout, and Native American cultural values.<sup>44</sup> The dam raise would also modify flows in a segment of the Sacramento River below the dam identified by the Bureau of Land Management for potential National Wild & Scenic River protection.<sup>45</sup>

**Flora and Fauna** – The enlarged reservoir footprint would cause permanent loss of habitat for numerous sensitive wildlife species, including Pacific fisher, northern spotted owl, northern goshawk, Cooper's hawk, purple martin, foothill yellow-legged frog, three Shasta salamander species, and several special status bat and mollusk species. The project would also result in the flooding of several rare plant populations and their habitat (including fully or partially inundating 11 of the 24 known sites where the Shasta snow-wreath, a rare flowering shrub found

nowhere else on earth – photo front page right).<sup>46</sup> Critical deer fawning areas and winter habitat will also drown beneath the expanded reservoir.<sup>47</sup>

Sacramento River National Wildlife Refuge – The dam raise/reservoir expansion would modify flows through the Sacramento River National Wildlife Refuge, with potentially significant impacts on the river’s riparian ecosystem and protected wildlife species that depend on that ecosystem (including the threatened yellow-billed cuckoo and bank swallow). The Bureau proposed a so-called Adaptive Management Plan to mitigate these impacts but provided no information on how the Plan would be implemented, how the needs of water contracts would be weighed against ecosystem flow needs, and what guarantees would be provided to ensure that these significant impacts are truly mitigated to less than significant levels.<sup>48</sup>

Delta – The effects of the dam raise/reservoir expansion would be felt all the way downstream to the Sacramento-San Joaquin Delta. Storing more water behind the expanded dam and reservoir would reduce fresh-water flows into the Delta during critical periods with increases in mortality for endangered Delta fish due to continued and increased reverse flows in the south Delta.<sup>49</sup>

## **Water Infrastructure Improvements for the Nation Act of 2016**

In 2016, Congress created the Water Infrastructure Improvements for the Nation Act of 2016, otherwise known as the WIIN. This legislation (S. 612) became law on December 16, 2016, and was a hybrid of a federal program for lead pollution management legislation for Flint Michigan, the 2016 Water Resources Development Act (WRDA), a slimmed-down version of the California Emergency Drought Relief Act of 2015 (S. 1894) from Senator Feinstein (D-CA), and other miscellaneous water matters. Subtitle J of Title 3 of the WIIN (especially §4007) created a new Reclamation authorization and funding program for federal and non-federal water projects — along with other matters.<sup>50</sup> Most provisions of Subtitle J sunset five years from the date of enactment. (§4007 storage projects already under construction are not sunsetted.<sup>51</sup> §4007 storage projects without Secretarial feasibility determinations by December 31, 2020, lose WIIN program status and eligibility.<sup>52</sup>) The Shasta Dam raise has been proceeding as a WIIN project.<sup>53</sup>

### **2018 Unlawful WIIN “Authorization” (Secretarial Determination for Commencement of Construction) and 2018 sequelae**

Secretarial Determination for Commencement of Construction: In January 2018, the federal administration appeared to have informed the Congress that a “Secretarial Determination for Commencement of Construction”<sup>54</sup> had been made to begin construction on the 18.5-foot raise under the authority of the WIIN. <sup>55</sup> According to the document, a cost-sharing partner was expected by the fall of 2019 and construction would begin in late 2019 (early fiscal year 2020). The communication did not inform the Congress that the raise is illegal under state and federal law nor made with the required conditions for such a determination.<sup>56</sup> This is in contrast to Reclamation’s 2014 SLWRI FEIS, which acknowledged “[t]he impact [of the dam-raise alternatives] will be significant” on the free-flowing characteristics of the McCloud River above current gross pool and be “in conflict with the PRC”<sup>57</sup> (California Public Resources Code; in this case, the Wild & Scenic Rivers Act chapter).

Congressional design funding approved: The WIIN provides for special Secretarial authorizations for storage projects in Reclamation states. For Reclamation projects, they must have at least a 50% non-federal cost-sharing partner or partners and comply with law, including state law.<sup>58</sup> Then House Majority Leader McCarthy attempted to eliminate the cost-sharing requirement and fund \$20 million of pre-construction and design work for the dam raise in the federal fiscal year 2018 omnibus appropriations bill (the Consolidated Appropriations Act, 2018 (Pub.L. 115–141)). California Natural Resources Secretary Laird, citing the state’s Wild and Scenic Rivers Act, opposed the funding and asked that the project not be pursued. The cost-sharing waiver was defeated, but the design funding was approved.<sup>59</sup>

Westlands and SLDMWA pursue cost-sharing agreement: Consistent with the Dept. of Interior cost-sharing policy later incorporated in the WIIN, the Westlands Board authorized entering into agreements-in-principle to cost share the dam raise with Reclamation in 2009 and 2014. These agreements were executed,<sup>60</sup> although both have expired, the last one in 2017.<sup>61</sup> In February 2018, the Westlands Water District, the largest irrigation district in the country, and since 2007 the owner of the Bollibokka fishing club on the lower McCloud River,<sup>62</sup> again

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.”<sup>63</sup> On March 8, 2018, the San Luis and Delta Mendota Water Agency (SLDMWA), “authorized sending a letter to the United States Department of the Interior for Potential Sharing Cost for Enlarging Shasta Dam and Reservoir.”<sup>64</sup>

On March 22, 2018, seven environmental, sportfishing, and commercial fishing groups sent a letter to SLDMWA explaining that it and some of its members under the California water and government codes are agencies of the state and thus subject to the restrictions of the California Wild and Scenic Rivers Act that prevent assistance or cooperation with the federal government in the dam raise.<sup>65</sup> In addition, local governments such as the City of Tracy that are members of the Authority must “exercise their powers granted under any other provision of law in a manner consistent with the policy and provisions of this chapter.”<sup>66</sup> Op eds, press accounts, and legal filings by and about the Authority and Westlands Water District say they dispute the California Natural Resources Secretary’s and group’s assertions that raising Shasta Dam and cooperating with Reclamation to raise the dam and thus place a reservoir on the McCloud River above the McCloud River Bridge are illegal.<sup>67</sup> However, to date there is no evidence that Westlands or SLDMWA sent these letters.

Reclamation chooses to misinterpret the California Wild & Scenic Rivers Act: In response to a member of Congress’s inquiry about the California’s assertion that the dam raise is illegal, the Administration replied, “...Reclamation does not interpret the California Public Resources Code to explicitly prohibit enlargement of Shasta Dam; rather, the statute speaks to impacts on the McCloud River and fisheries. Legal, factual, technical and engineering questions exist as to whether the state law applies and whether those provisions are triggered by the Shasta enlargement.”<sup>68</sup> This statement is of course in conflict with the SLWRI final EIS that states that the dam raise is in conflict with state law and maps the geography of the impermissible reservoir expansion.<sup>69</sup>

### **2019–21 WIIN Reauthorization Attempts**

On June 20, 2019, Senator Feinstein and others introduced the “Drought Resiliency and Water Supply Infrastructure Act” (S. 1932, DRWSIA).<sup>70</sup> This legislation would have eliminated the sunset clause for the WIIN storage program,<sup>71</sup> extended funding authority for the WIIN storage program for an additional five years, increased the authorized ceiling for appropriations to just over a billion dollars, provided that canals to and from storage facilities would be eligible for WIIN/DRWSIA funding, provided more guidance on how appropriations committees would hand over WIIN/DRWSIA design and construction funding decisions over to the Secretary of the Interior, and provided for Reclamation to issue loans and grants to applicants seeking to fund storage projects. The proposed legislation does not clarify that a Secretarial determination for commencement of construction or feasibility can only be for lawful projects. The WIIN anti-preemption language (existing duties to follow state law are not changed) is not materially changed by DRWSIA as introduced.<sup>72</sup> The legislation did not pass in the 116<sup>th</sup>. The WIIN expired on December 16, 2021.

WIIN-extension legislation was introduced in the 117<sup>th</sup> Congress by Rep. David Valadao (R-Hanford).<sup>73</sup>

### **2019–2020 Lawsuits**

Westlands begins its Shasta Dam Raise Project EIR public process: On November 30, 2018, the Westlands Water District, as lead agency, issued a Notice of Preparation for an environmental impact report (EIR) for what it calls the “Shasta Dam Raise Project,” (SDRP). The minutes for Westlands’ September 18, 2018, Board of Directors meeting indicate that Westlands considers this CEQA review “necessary to become a cost-share partner,” and that it believed it should commence the California Environmental Quality Act (CEQA) EIR process “as soon as possible” in order to “adhere to the current schedule” communicated by Reclamation.<sup>74</sup> The deadline for comments was on January 14, 2019. The District held an open house and scoping session and an unannounced off-the-record public comment session on December 12, 2018, in Redding California.<sup>75</sup> Westlands then contemplated that a draft EIR would be released in early spring 2019.

NOP comments flow into Westlands: In addition to scoping comments by the Winnemem Wintu Tribe and environmental groups<sup>76</sup>, state agencies also provided comments to Westlands. For example, the California Department of Fish and Wildlife noted that the project would “convert part of the McCloud River into reservoir

habitat, changing the free-flowing condition of the McCloud River. It further stated that “[i]nundation of the McCloud River would result in a significant loss of this river ecosystem to a reservoir ecosystem, resulting in direct and indirect adverse impacts to the current trout fishery in conflict with State law and policy.”<sup>77</sup>

In its comments, the State Water Resources Control Board’s executive officer stated that Westlands is an agency of the state, thus subject to the state law prohibition on assistance in planning with federal, state, or local agencies for impoundment facilities that “could have an adverse effect on the free-flowing condition of the McCloud River or its wild trout fishery.”<sup>78</sup> The letter said that EIR lead-agency status is “planning” for the purposes of this part of the California Wild and Scenic Rivers Act. It also stated that preparation of an EIR to support state and local approvals is similarly unlawful, as is sharing EIR or construction costs with others. In summary, the expanded reservoir would convert a free-flowing reach of river to “impounded waters,” and Westlands’ EIR preparation is thus prohibited by the statutory language. The comment letter also noted the Water Code prohibits the Board from issuing permits or “otherwise” to such projects and highlights that the construction of SDRP requires the Board to provide time extensions on Reclamation’s Shasta Dam water rights permits, an action that the Board believes the California Wild & Scenic Rivers Act prohibits.<sup>79</sup>

Westlands sued for violating the CA Wild & Scenic Rivers Act: On May 13, 2019, in separate lawsuits, the California Attorney General, representing the people of California, and Friends of the River *et al.* (Friends of the River, Golden Gate Salmon Association, Pacific Coast Fishermen’s Association, Institute for Fisheries Resources, Sierra Club, Defenders of Wildlife, and the Natural Resources Defense Council), represented by Earthjustice, filed a complaint in Shasta County Superior Court against the Westlands Water District for violation of the California Wild & Scenic Rivers Act. The complaints sought declaratory and injunctive relief and a writ of mandate or preliminary writ that Westlands is prohibited from undertaking the SDRP EIR, signing a cost-sharing agreement with Reclamation, and must halt its assistance and cooperation with Reclamation’s Shasta Dam raise project.<sup>80</sup>

On June 12, 2019, Westland petitioned for a change in venue from the superior court in Shasta County to Fresno County.<sup>81</sup> Also on June 12, 2019, the California Attorney General sought a preliminary injunction against Westlands’ continued violations of the California Wild & Scenic Rivers Act, including its preparation of an Environmental Impact Report.<sup>82</sup> Action on the preliminary injunction request could not take place until venue was established. On June 20, 2019, the North Coast Rivers Alliance and the San Francisco Bay Crab Boat Owners Association, represented by the law office of Stephen Volker, filed a complaint against Westlands Water District for violation of the California Wild & Scenic Rivers Act, the Public Trust Doctrine, and the Delta Reform Act. Reclamation was named as a “real party in interest.” The venue and relief sought was similar to the May 13 lawsuits.<sup>83</sup> On July 8, 2019, Friends of the River *et al.* and the CA Attorney General filed their opposition to the proposed venue change.<sup>84</sup> Westlands’ reply to opposition to their venue change motion was filed on July 15<sup>th</sup>. Judge Wood issued a tentative ruling on July 19<sup>th</sup>, keeping venue in Shasta County Superior Court. At the July 22, 2019, venue hearing, Westlands did not contest the tentative venue ruling. After a July 29, 2019, hearing on the CA Attorney General’s request for a preliminary injunction in Shasta County Superior Court a preliminary injunction was issued barring Westlands from continuing with the EIR and planning and construction of the dam raise project.<sup>85</sup>

Reclamation responds to preliminary injunction against Westlands: Reclamation’s response was covered in Damon Arthur’s article in the Redding Record Searchlight on the preliminary injunction quoting Reclamation spokesperson Jeff Hawk:

“We have not reviewed the ruling, however such a ruling would not prevent [R]eclamation from moving forward with the Shasta Dam and Reservoir Enlargement Project,” Hawk said.<sup>86</sup>

Mr. Hawk did not note that Reclamation is proceeding forward on the project under the authority of the Water Infrastructure Improvements for the Nation Act of 2016 (WIIN). This statute requires a 50% non-federal cost-sharing partner (presumably Westlands), compliance with “environmental” law (presumably including CAWSRA), and leaves unaltered Reclamation’s CVPIA requirements to comply with state law.

Reclamation’s response to the California Supreme Court’s denial of Westlands’ request to vacate the injunction was also covered by the Redding Record Searchlight:

Jeffrey Hawk, a bureau spokesman, said there were other non-federal partners interested in helping to pay for raising the height of the dam, but he declined to say who they were.

He said the bureau also is still planning to issue construction contracts for the dam project by the end of the year, but that is “contingent on necessary congressional and statutory compliance approvals.”<sup>87</sup>

Westlands loses appeals against preliminary injunction: On August 12, 2019, Westlands Water District (“Westlands”) petitioned the Third Appellate District for a writ of mandate and/or prohibition, or other appropriate relief, directing respondent Shasta County Superior Court to vacate its preliminary injunction.<sup>88</sup> The request, as well as the venue appeal, was rejected on August 29, 2019.<sup>89</sup> On September 6, 2019, Westlands petitioned the California Supreme Court to block the preliminary injunction, a petition rejected by the court on September 25, 2019.<sup>90</sup> On August 30, 2019, Westlands moved to strike plaintiffs’ declaratory relief claims.<sup>91</sup> This October 7 hearing on the motion and opposition to it was continued for parties to explore settlement.<sup>92</sup>

Westlands terminates its EIR but announces a separate analysis that would allow it to resume its EIR: On September 30, Westlands announced that it was terminating its existing EIR.<sup>93</sup> A *Politico* article<sup>94</sup> on the same day offered the explanation on the same day:

Westlands Water District, the largest agricultural water district in the country, said it would instead perform a separate analysis of whether raising the Northern California dam would harm the McCloud River upstream, which could eventually lead to resuming environmental permitting work.

Final ruling: On November 8, 2019, the parties announced a tentative settlement that would ask the court to forbid Westlands from initiating an EIR, signing a cost-sharing agreement with Reclamation, or acquiring any real property to facilitate the reservoir expansion — to the extent that this would violate the California Wild & Scenic Rivers Act.<sup>95</sup> On November 20, 2019, the court accepted the settlement.<sup>96</sup> It should be noted that in the *Politico* article above and a subsequent press account that Westlands has indicated its belief that none of these activities are inconsistent with this statute once they make a determination that the reservoir expansion “would” not have an adverse effect on the free-flowing status of the McCloud River or its wild trout fishery.<sup>97</sup>

FOIA lawsuit against Reclamation: On December 20, 2019, the Golden State Salmon Association *et al.* (GGSA, PCFFA, IFR, Friends of the River, & the Sierra Club), represented by Earthjustice, filed a complaint in the Northern District of California against Reclamation for failure to comply with the Freedom of Information Act (FOIA) regarding information requests associated with their proposed project. On March 23, 2020, a second lawsuit was filed to produce additional documents, and a motion made to consolidate the FOIA cases.<sup>98</sup> Document production began by agreement of the parties under the supervision of the court. The case is now in the determination-of-plaintiff’s-attorney’s-fees phase.

## **Trump Administration-Era Activities**

Reclamation proceeds: Since at least the time of the “Secretarial Determination for Commencement of Construction,” Reclamation has called the project the Shasta Dam & Reservoir Expansion Project (SDREP).<sup>99</sup> Their announced activities have been the following: engineering design for an 18.5 foot dam raise; coordination with various federal, state, railroad and local agencies; consultations with tribal interests, land-owners, government and non-government agencies, preparing various required documents; identifying non-federal cost-share partner(s); public involvement and stakeholder outreach; land resource management work such as, interagency agreements and land acquisition planning; and design activities for facilities to be relocated, including: roads, railroad, bridges and marinas.<sup>100</sup>

Shasta salamander ESA complaint: On November 29, 2018, the Center for Biological Diversity filed a complaint for injunctive and declaratory relief against the Department of the Interior and the U.S. Fish & Wildlife Service for failure to make a mandatory finding on whether three range-restricted Shasta salamander species (*Hydromantes sp.*) should be listed as threatened or endangered under the Endangered Species Act. The complaint says that the salamanders are present on the lands that would be inundated by the expanded Shasta Reservoir.<sup>101</sup> The SLWRI FEIS called the impacts to the salamander(s) significant and unavoidable even with mitigation.<sup>102</sup> On May 4–5, 2021, the U.S. Fish & Wildlife Service denied the request.<sup>103</sup>

Reclamation not concerned about state objections: State objections to the project did not seem to be a concern of Reclamation. KQED's science reporter Craig Miller interviewed Reclamation's Area Manager Don Bader during pre-construction core drilling:

"We're proceeding along the federal route here," says Bader. "If California does not participate in this process, we'll move along forward by getting the federal approval."  
Some might interpret that as saying they're going through with this regardless of what California thinks. "That's one way to say it," says Bader.<sup>104</sup>

State objections continue: In April 2019, in response to a question about his concerns about Reclamation's Shasta Dam Raise & Enlargement Project (SDREP) by the Water Education Foundation, California Natural Resources Secretary Wade Crowfoot replied:

Federal officials are pursuing efforts to raise Shasta Dam on the Sacramento River in Northern California, despite state concerns that raising the dam would violate the protection for the McCloud River under California's Wild and Scenic Rivers Act. The state's concerns center on the project's adverse impacts on the McCloud River, which is specifically protected under state law. The California Department of Fish and Wildlife and the State Water Resources Control Board restated these concerns in recent comment letters regarding the proposed raise. We hope the Bureau of Reclamation will closely consider our state agencies' concerns in the coming months.<sup>105</sup>

Reclamation's SDREP schedule: Reclamation maintains a webpage providing SDREP status. At this writing, they say they intend to (1) complete cost-sharing agreements in the summer of 2019, (2) execute the Record of Decision (ROD) in September 2019, and (3) award the construction contract in 2019,<sup>106</sup> although that date has passed, along with some other missed project milestones. The website materials state that the project is projected to be completed in 2025.<sup>107</sup>

Reclamation seeks partners: Reclamation had offered to conduct tours of Shasta Dam and the McCloud River reach that would be inundated by the reservoir expansion project for potential cost-sharing partners, including the San Luis and Delta-Mendota Water Authority. On March 22, 2019, Reclamation construction engineer Richard Welsh informed the SLDMWA general manager that the estimated cost for the dam raise was currently \$2 billion. (It is unknown what the seismic dam-safety retrofit costs might be, but only 15% of the costs of such projects would be borne by CVP contractors.) On June 25, 2019, Reclamation Commissioner Brenda Burman, implementing Reclamation Central Valley Project Power Initiative, directed Reclamation's Mid-Pacific Region to "work with Reclamation's Policy and Administration Directorate, the non-Federal cost share partners, preference power customers, WAPA, and other stakeholders to update the benefits, costs and financial impacts associated with inclusion of a hydropower purpose for the proposed Shasta Dam and Reservoir Enlargement project during the pre-construction true-up process."<sup>108</sup>

At least by February and March of 2019, Westlands was outreaching to other prominent CVP contractors in hopes of acting as the Reclamation's middleman, reselling Shasta Dam-raise water that it contracts for as the local cost-sharing partner with Reclamation to other prominent CVP contractors.<sup>109</sup>

The Shasta Snowwreath CESA listing petition: On September 30, 2019, a California Endangered Species Act listing petition for the Shasta Snow Wreath, *Neviusia cliftonii*, was received by the California Fish & Game Commission.<sup>110</sup> (Photo on front page right.) This review continued.<sup>111</sup> The Commission declared the Snow Wreath a candidate species on April 21, 2020.<sup>112</sup>

Administration and Congressional SDREP and construction funding requests fail: The Administration FY2020 budget request was for \$57 million for the Shasta Dam and Reservoir Enlargement Project (SDREP).<sup>113</sup> In June of 2019, it was learned that the California House of Representative Republicans remaining after the 2018 general election, Representatives Calvert, McCarthy, McClintock, Nunes, LaMalfa, Cook, and Hunter, all offered an amendment to the House Energy and Water Appropriations bill to make funding available to the Shasta Dam and Reservoir Enlargement project, a water project recommended by the Administration under the WIIN Act.

According to press accounts, appropriations for funding the Shasta Dam raise has been a matter of dispute between Speaker Pelosi and Majority Leader McCarthy for the FY 2020 final appropriations bill in December 2019.<sup>114</sup> The FY 2019-20 Energy and Water Appropriations bill (that's where the federal government funds dams and water projects) was put into a "minibus" called the "Further Consolidated Appropriations Act, 2020," H.R. 1865. It reappropriated WIIN study funds from FY2017 & 2018 into FY2020 for a number of California proposed dams. The Shasta Dam raise was not on the list of these projects.<sup>115</sup>

On February 4, 2020, House Minority Leader McCarthy announced a Secretarial "additional distribution of funding" of WIIN appropriations for FY 2020 of \$8 million for pre-construction engineering and design for the Shasta Dam raise.<sup>116</sup> This Secretarial distribution was apparently from H.R. 1865 unspecified WIIN appropriations in addition to the specified project appropriations largely derived from the President's budget.<sup>117</sup> This appears to be the first time the Secretary of the Interior has made his own distributions of discretionary funds under his control for storage projects in the Reclamation states.

**Federal SDREP boosting:** On February 18, 2020, U.S. Secretary of the Interior David Bernhardt spoke at the California Water Forum in Tulare, California, and stated that raising of Shasta Dam is "a priority" for the Trump Administration and that the Department of Interior is "pushing it." Secretary Bernhardt also stated that Interior had "put money in our budget, and we've been making progress every day, and we'll be modifying...Actually, you don't have to take Dave Bernhardt's word on this. The last administration thought that Shasta was a pretty good idea too. They put this EIS together and made some policy calls about its feasibility." He further stated that, "we'll be updating that environmental document in the next short period of time, so that will be the next step you see on us moving."<sup>118</sup>

On February 19, 2020, President Donald Trump promised Bakersfield crowds that he would get them "a lot of water, a lot of dam, a lot of everything."<sup>119</sup> He then signed an executive order saying: "To help develop and deliver water supplies in the Central Valley of California, I direct those Secretaries to coordinate efforts to: (a) implement the relevant authorities of subtitle J of the Water Infrastructure Improvements for the Nation Act (Public Law 114-322), which include provisions focused on (1) developing water storage..."<sup>120</sup>

On February 27, 2020, the Bureau of Reclamation posted the following on Twitter: "President Trump told us to improve #CAwater reliability. Today we're continuing pre-construction work at Shasta Dam to improve water supplies for farms, family and fish and wildlife. #RaiseShasta, @USBR."<sup>121</sup>

**Reclamation ignores the state:** On February 25, 2020, the State Central Valley Regional Water Quality Control Board received a letter from Reclamation rejecting the Board's rescission and denial of a \$401 Clean Water Act permit for Reclamation's "Shasta Lake Geologic Testing and Scope Project." Reclamation would therefore be proceeding with the Project.<sup>122</sup>

**More Administration efforts:** On June 4, 2020, President Donald Trump signed an executive order in part "to facilitate the Nation's economic recovery, the Secretary of Defense, the Secretary of the Interior, and the Secretary of Agriculture shall use all relevant emergency and other authorities to expedite work on, and completion of, all authorized and appropriated infrastructure, energy, environmental, and natural resources projects on Federal lands that are within the authority of each of the Secretaries to perform or to advance."<sup>123</sup>

On June 22, 2020, Assistant Secretary of the Interior Timothy Petty requested \$15 million in preconstruction design and construction funding for the Shasta Dam Raise and Reservoir Expansion Project in a letter to the chair of the House of Representatives Appropriations Committee.<sup>124</sup>

**Rep. McCarthy rebuffed again:** In December 2020, it was reported that House Minority Leader Kevin McCarthy was seeking to authorize the construction of the Shasta Dam raise and a time extension on the WIIN in the federal FY 2020-21 omnibus appropriations bill.<sup>125</sup> That request was not accepted. On December 20, 2020, Reclamation posted a post-omnibus-bill-signing press release complaining that "[d]espite previously approving \$20 million, Democratic leaders in Congress blocked \$115 million in additional requested funding for this project, one of the smartest and most cost-effective opportunities California has to create additional water storage."<sup>126</sup> Instead, under the omnibus appropriations bill, no pre-construction and construction expenditures from this bill could be made for the Shasta Dam raise project.<sup>127</sup> It is unclear to these writers if the Secretary has the authority to make



pre-construction or construction “additional distribution of funding” from unearmarked prior-year WIIN §4007(h) or §4011(e) appropriations or repayment contributions to the Reclamation Water Storage Account.<sup>128</sup> However, it is unlikely that the Biden Administration will do so for this project. If so, it is unlikely that Reclamation could meet the December 16, 2021, WIIN §4013 construction-start deadline to maintain WIIN program eligibility.

Interior Secretary Bernhardt fails to make a Secretarial feasibility determination: Reclamation apparently did not send a Secretarial feasibility determination letter shortly before the WIIN §4007(i).<sup>129</sup> December 31, 2020, as it did for at least three other California dam projects that might receive WIIN subsidies.<sup>130</sup> If so, this would mean that the Shasta Dam raise would no longer be a WIIN-eligible federal storage project. However, on January 28, 2021, the Congressional Research Service (CRS) reported, *without providing a WIIN Secretarial determination letter*, that the SDREP was “found feasible prior to the WIIN Act deadline of January 1, 2021.”<sup>131</sup> Speculation for the basis of this conclusion may rest on that when “Reclamation Transmits to Congress Final Report on Proposed Shasta Dam Raise” on July 29, 2015,<sup>132</sup> before the passage of the WIIN, the Report carried the imprimatur of both Reclamation and the Department of the Interior. Such a “Secretarial” feasibility determination is inconsistent with the procedures Reclamation reported it would follow in its FY 2021 Budget Justifications where it stated that Secretarial determinations would separately *follow* final feasibility reports or accompany a Record of Decision:

The CALFED water storage program plans to complete Final Feasibility Report for the North of the Delta Offstream Storage Project and submit to the Secretary of the Interior for a Feasibility determination; complete Final Feasibility Report and/or Concluding Report for the Upper San Joaquin River Storage Project and submit to the Regional Director; and Secretary Determination of Feasibility and signing of the Record of Decision for the Supplement to the Final Environmental Impact Statement for the Los Vaqueros Phase II Feasibility Investigation.<sup>133</sup>

## **2020 SLWRI Supplemental Environmental Impact Statement**

Reclamation’s supplemental EIS fails to understand California and federal law: On August 6, 2020, Reclamation issued a draft supplemental environmental impact statement (DSEIS) for the SLWRI.<sup>134</sup> It provided a digital open house to explain the project.<sup>135</sup> The purpose of the DSEIS was to provide Reclamation with a Clean Water Act 404(r) exemption from certain state water quality permits and to excise some statements in Chapter 25 of the SLWRI FEIS that the dam raise was in conflict with state law. As part of that latter effort, Reclamation also appeared to adopt an aberrant reading of the California Wild & Scenic Rivers Act that the statute’s language protecting the McCloud River did not apply to their proposed Shasta Dam raise. It started by noting in its Virtual Open House<sup>136</sup> to the DSEIS the following:

Reclamation’s view is that there is a question as to whether the legislature intended to prohibit the Shasta Dam raise... (Virtual Open House, station 8).

The Virtual Open House also answered Reclamation’s preceding question:

California did take legislative measures to protect the River’s wild trout fishery below McCloud Dam from the construction of new dams. The enlargement of Shasta Dam was exempt. (Virtual Open House, station 6)

This statement, of course, is an incomplete discussion of the statute and effectively not true. The last sentence is a complete fabrication.<sup>137</sup> The Supplemental EIS, with only partial success, attempted to eliminate the SLWRI FEIS discussion of the California Wild & Scenic Rivers Act of the project’s conflict with state law:

Reclamation has no obligation to analyze state law requirements under the California Wild and Scenic Rivers Act, and this section is therefore being revised to reflect and re-focus the analysis on the federal requirements. (Draft & Final SEIS p. 5-3)

Thus the SEIS seemed to exempt itself from repeating the clear but erroneous statements in its Virtual Open House that Reclamation’s proposed reservoir expansion project was exempt from the provisions of the California Wild & Scenic Rivers Act. The SEIS did opine, however, on another subsection (PRC Section 5093.542(c)).” of the

California Wild & Scenic Rivers Act that prohibits state permitting and potential non-federal cost-sharing partners:

“In other words, the legislature specifically excepted enlargement of Shasta Dam from the prohibition on assisting or cooperating in projects such as the facilities identified in PRC Section 5093.542(b).” (SLWRI Draft & Final SEIS, p. 5-4).

The statute does not exempt the dam raise; rather, it specifically mentions the project and carves a limited exception from its applicability for certain DWR studies.<sup>138</sup> This was demonstrated in the Westlands litigation discussed previously.

Critical comments: The draft supplemental drew comments from the State Water Resources Control Board that the state’s wild & scenic rivers act did, indeed, require that state agencies not provide required permits and other approvals for the dam raise project. The Board also reminded Reclamation that the 404(r) exemption would not be achieved by the supplemental EIS and that 404(r) does not apply to all needed state permits, including a change in Reclamation’s CVP water rights permits or state Porter-Cologne Act water quality permits.<sup>139</sup> The California Department of Fish & Game provide some considerable discussion correcting Reclamation’s misunderstandings about the California Wild & Scenic Rivers Act and re-emphasized their conclusion that “[t]he Department finds this project’s impacts are in conflict with California Public Resources Code section 5093.542.”<sup>140</sup> The California Attorney General’s comments also emphasized this conflict.<sup>141</sup> Environmental groups offered similar and often considerably expanded subject-area comments.<sup>142</sup> They also asked for a public update of the 2014–2015-era SLWRI Feasibility Report.<sup>143</sup> Environmental groups also surfaced redacted internal but-not-final Reclamation documents obtained under the Freedom of Information Act of a 2019 Reclamation analysis that suggested that Shasta Dam required seismic upgrade work. This work could not begin until 2028 and it would delay any dam-raise construction start to 2028 as well.<sup>144</sup>

Reclamation issues unchanged final supplemental EIS: Reclamation announced the completion of the Final Supplemental EIS on November 19, 2020.<sup>145</sup> The Supplemental FEIS did not favorably respond to state agency or environmental group comments.<sup>146</sup> As an example, Reclamation, without explanation, claimed that the WIIN §4007(b)(4) WIIN requirements to follow environmental law (including state law) and that the §4007(j) and §4012 requirement to meet its existing obligations to follow state law under (including the Central Valley Project Improvement Act) were limited solely limit to its Reclamation Act §8 obligations.<sup>147</sup>

Second, several commenters asserted the WIIN Act requires strict compliance with all state environmental laws, and that the SEIS therefore failed to explain how the project specifically adheres to all relevant state environmental laws. However, the WIIN Act does not expand Reclamation’s obligation to comply with any state law beyond that which is already required under § 8 of the Reclamation Act, which requires consistency with state water law—those laws addressing the control, appropriation, use, or distribution of water. 43 U.S.C. § 373.<sup>148</sup>

Reclamation “transmitted” the FEIS to the ranking member of the Subcommittee on Water Oceans, and Wildlife of the House Committee on Natural Resources, Rep. Tom McClintock, on January 12, 2021. The transmittal letter noted that “Reclamation determined that it was appropriate and necessary to provide supplemental analysis in order to proceed with the SLWRI under the authority of the Water Infrastructure Improvements for the Nation Act (P.L. 114-322), Section 4007.”<sup>149</sup> The transmittal letter was silent on whether there had been a Secretarial feasibility determination before January 1, 2021. The transmittal letter did not describe how the Secretary’s apparent 2018 WIIN “determination for commencement of construction” had been undertaken since it was contrary to WIIN statutory requirements.

Secretary Bernhardt fails to complete the EIS NEPA process: In the end, however, no Record of Decision (ROD) for Reclamation’s SLWRI and SDREP National Environmental Policy Act (NEPA) documents was made before the January 20, 2021, Presidential inauguration.

Secretary Haaland fails to sign ROD rejecting the Shasta Dam raise: No ROD has been issued by Secretary Haaland, Secretary Bernhardt’s successor, adopting the obvious conclusion that the SDREP is illegal and therefore infeasible — ending Reclamation’s NEPA work to pursue the Shasta Dam raise.

## 2021 Developments

McCloud River on the endangered list: On April 13, 2021, the environmental group American Rivers placed the McCloud River on its 2021 “ten most endangered rivers list,”<sup>150</sup> calling for the new Department of the Interior to end the project.<sup>151</sup> The FOR et al. introductory comments on Reclamation’s draft Supplemental Environmental Impact Statement provides advice on how to do this:

[T]here is sufficient information in the SLWRI FEIS, Final Feasibility Report, the DSEIS, and comments to the DSEIS to conclude that the action alternatives of the SLWRI and synonymous Shasta Dam and Reservoir Expansion Project (SDREP) and Shasta Dam Raise Project (SDRP) are not feasible, in part because (1) California law prevents cost-sharing partners from cooperating and assisting Reclamation with this project, (2) certain required permits will not be available to Reclamation and others, and (3) that the action alternatives are unlawful under federal law. Information developed in the SLWRI requires that a non-reservoir expansion alternative be adopted in the project Record of Decision (ROD) as the preferred and recommended alternative for the SLWRI/SDREP — and the SLWRI ended. Information developed in the SLWRI (or information that should have been developed) does not support adoption of the dam-raise (action) alternatives.<sup>152</sup>

There have been follow-up letters to Interior Secretary Haaland, but no actions have been taken by the Secretary.<sup>153</sup>

The 2021 big funding bill, the BIB/IIJA: Title IX<sup>154</sup> (Western Water Infrastructure) of the 2021 bipartisan infrastructure bill (The Infrastructure Investment and Jobs Act, HR 3684,) created a WIIN-like storage subsidy program authorizing \$1.150 billion for water storage, groundwater storage, and conveyance projects and \$3.2 billion for rehabilitation of projects identified on Reclamation’s Asset Management Report. HR 3684 (the “IIJA” or less formally called the Bipartisan Infrastructure Bill, “the BIB”) also allows Corona Virus Relief Funds to be diverted to paying the non-federal cost-sharing requirement (presumably for feasibility and construction work) for authorized Reclamation projects. The unspent relief funds could also be used for other non-federal funding requirements for authorized Reclamation projects.<sup>155</sup> The IIJA also requires that reimbursable and non-reimbursable federal funding to federal projects complies with Reclamation law.<sup>156</sup>

The IIJA appears to allow for federal Shasta Dam raise feasibility studies. It does not allow for construction funding.<sup>157</sup>

Authorization of IIJA Title IX appropriations expires at the end of the 2026 federal fiscal year (§40901).<sup>158</sup>

## 2023 Developments

WATER for California bill: On January 9, 2023, in the opening days of the 118<sup>th</sup> Congress, Representative David Valadao (R-Hanford) introduced H.R. 215, the Working to Advance Tangible and Effective Reforms (WATER) for California Act (the WATER for California Act).<sup>159</sup> The measure was co-sponsored by Speaker of the House Kevin McCarthy (R-Bakersfield) along with the members of the California Republican delegation to the U.S. House of Representatives.<sup>160</sup> H.R. 215 would extend the Water Infrastructure Improvements for the Nation Act of 2016 (WIIN) §4007(i) storage feasibility-determination deadline from January 1, 2021 to January 1, 2028. (H.R. 215 §304(a)(2)).<sup>161</sup> As noted earlier, it does not appear that there had been a Secretarial feasibility-determination letter for Reclamation’s Shasta Dam Raise and Reservoir Expansion project (SDREP) before, or even indeed after, the WIIN deadline. Thus, the SDREP might benefit from this provision of H.R. 215. In addition, the generic sunset provision for the WIIN would be extended from December 16, 2021 to December 31, 2028. (H.R. 215 §304(b)). As in WIIN §4013(2), WIIN storage projects actually under construction are exempt from the new sunset clause.<sup>162</sup> The SDREP is not yet under construction.

H.R. 215 would amend WIIN §4007(a)(1) to allow the Secretary of the Interior at the request of any stakeholder (instead of just public agencies) “to negotiate and enter into an agreement on behalf of the United States for the design, study, and construction or expansion of any federally owned storage project in accordance with this

section. (H.R. 215 §304(a)(1)).<sup>163</sup> The California Wild & Scenic Rivers Act has prohibited California public agencies from assisting with the SDREP since 1989. (CA Public Resources Code §5093.542(c)) Private citizens, and California public and federal agencies, have been prohibited from sponsoring or co-sponsoring the construction of the SDREP also since 1989. (CA Public Resources Code §5093.542(b))

H.R. 215 §305(a) would, apparently without the previous restrictions, make available unspent WIIN Act appropriations from 2017–2021 to Reclamation’s Water and Related Resources Account.<sup>164</sup> These appropriations bills prohibited construction funding for Reclamation’s SDREP. In addition, H.R. 215 §301 amends the IJA to allow for Congressional appropriations for the construction of Shasta Dam under the IJA.<sup>165</sup> The IJA also prohibited construction funding for the SDREP.

H.R. 215 §305(b) purports to override (for CVP contractors) the California Wild & Scenic Rivers Act provisions (CA PRC §5093.542(c)) that prevent public agencies of California (agencies of the state and many of its political subdivisions) from assisting Reclamation in the planning and construction of the SDREP.<sup>166</sup>

H.R. 215 drew considerable opposition.<sup>167</sup> H.R. 215 was passed (marked up) by the House Natural Resources Committee on April 28, 2023.<sup>168</sup>

**Western Water Accelerated Revenue Repayment Act:** On May 25, 2023, Rep. Lauren Boebert (R-CO) introduced H.R. 3675,<sup>169</sup> a measure to make the WIIN Act provisions to allow Reclamation water-service contractors to prepay their capital debt obligations to Reclamation and become §9(b) water-repayment contractors. Revenues received by the federal government will be set aside to subsidize WIIN federal water storage projects and Secretarial grants to non-federal water projects. Reclamation’s Shasta Dam-raise study and design costs took place under the authority of the WIIN Act. Reclamation water-repayment contractors have no acreage limitations, their contracts are permanent at the face value of their water-service contracts, and only are responsible for paying Reclamation’s operation and maintenance costs. The House Natural Resources Committee heard H.R. 3675 on June 14, 2023.<sup>170</sup>

**Energy and Water Development and Related Agencies Funding Bill (includes H.R. 215):** In June, 2023, the House Energy and Water Development and Related Agencies Subcommittee of the Appropriations Committee added H.R. 215 (Valadao) to its markup of the Energy & Water Appropriations bill, (page 64, Title V “Water for California” Sec. 501)<sup>171</sup> loosening the restrictions on Shasta Reservoir expansion construction funding<sup>172</sup> and preempting a portion of the McCloud River protections in the California Wild & Scenic Rivers Act.<sup>173</sup> On October 3, the Administration threatened to veto the House Energy & Water Appropriations bill,<sup>174</sup> noting its opposition to ending the IJA prohibition on construction funding for the Shasta Dam & Reservoir Expansion Project.<sup>175</sup> On October 26, the U.S. House of Representative passed H.R. 4394, the “Energy and Water Development and Related Agencies Appropriations Act for Fiscal Year 2024.” H.R. 4394 included H.R. 215.<sup>176</sup>

For current fact sheets and more resources see: <https://www.friendsoftheriver.org/our-work/rivers-under-threat/sacramento-threat-shasta/> For additional information concerning this project, please contact Ronald Stork, Friends of the River, (916) 442-3155 x 220, [rstork@friendsoftheriver.org](mailto:rstork@friendsoftheriver.org) or Steve Evans, Wild Rivers Project Consultant for the California Wilderness Coalition, phone: (916) 708-3155, [sevans@calwild.org](mailto:sevans@calwild.org).

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<sup>1</sup> [https://en.wikipedia.org/wiki/List\\_of\\_the\\_tallest\\_dams\\_in\\_United\\_States](https://en.wikipedia.org/wiki/List_of_the_tallest_dams_in_United_States).

<sup>2</sup> The California Water Atlas, prepared by the Governor’s Office of Planning & Research in cooperation with the California Department of Water Resources, 1978 & 1979, p. 59.

<sup>3</sup> “The four major tributaries to Shasta Lake are the Sacramento River, McCloud River, Pit River, and Squaw Creek, in addition to numerous minor tributary creeks and streams.” Shasta Lake Water Resources Investigation (SLWRI) Final Feasibility Report, July 2015, p. 1-12. The entire Final Feasibility Report can be found on Reclamation’s website: <https://www.usbr.gov/mp/ncao/slwri/docs/feasability/slwri-final-fr-full.pdf>

<sup>4</sup> SLWRI Final Feasibility Report, pp. 1-9, 1-12 figure 1-5.

<sup>5</sup> SLWRI Final Feasibility Report, pp. 6-1–2.

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<sup>6</sup> The 18.5 ft. dam raise would increase the reservoir full-pool elevation by 20.5 feet, representing an enlargement of reservoir storage capacity by 634,000 acre-feet to a total capacity of 5.19 million acre-feet. SLWRI Final Feasibility Report, p. ES-19.

<sup>7</sup> SLWRI Final Feasibility Report p. 6-7 and Final Environmental Impact Statement Shasta Lake Water Resources Investigation, United States Department of the Interior Bureau of Reclamation, Mid-Pacific Region, Final Environmental Impact Statement, December 2014, (SLWRI FEIS) pp. S-34 and 32-8 identifies the National Economic Development (NED) project as the preferred alternative. The entire FEIS can be found on Reclamation's website:

[https://www.usbr.gov/mp/nepa/nepa\\_project\\_details.php?Project\\_ID=1915](https://www.usbr.gov/mp/nepa/nepa_project_details.php?Project_ID=1915)

<sup>8</sup> For more discussion and an expanded list of intended or modeled benefits of the NED alternative, see SLWRI Final Feasibility Report, pp. 6-3-4. In the preferred alternative, the Shasta power plant is modeled to increase Energy production by 5% resulting in a 2% increase in net CVP energy production. SLWRI FEIS p. 23-21, table 23-7.

<sup>9</sup> SLWRI Final Feasibility Report p. 9-1. Although no plan is recommended, a plan (CP4A) is identified as the preferred plan. Table 6-15 from page 45, Chapter 6, "Timeline and Status of Feasibility Study," states: "This Final Feasibility Report evaluates and compares comprehensive plans and identifies the NED Plan. The Final EIS includes responses to public comments and identifies the Preferred Alternative." However, identification of a preferred but not recommended alternative in the Final Feasibility Report that is released to Congress was inconsistent with the 2004 federal statute authorizing the Secretary of the Interior to, in consultation with the Governor of California, submit the feasibility report of this and other named federal projects to the Congress once the Secretary determines that it should be constructed using in whole or in part federal funds. HR 2828, 108th Congress. The "Water Supply, Reliability, and Environmental Improvement Act." MP-15-122 Reclamation Transmits to Congress Final Report on Proposed Shasta Dam Raise, U.S. Bureau of Reclamation, Mid Pacific Region News Release, July 29, 2015.

<http://www.usbr.gov/newsroom/newsrelease/detail.cfm?RecordID=49890>.

<sup>10</sup> "Current Federal Budget conditions and the impacts those conditions have on Reclamation's budgetary resources significantly constrain Reclamation's ability to fully fund new construction activities of the scope and magnitude required by the SLWRI. As a result, the traditional model under Federal reclamation law, with Congress providing funding from annual appropriations to cover all the costs of construction over a relatively short period of time, and a portion of those funds being repaid to the Treasury over 40-50 years, is unrealistic for the identified SLWRI NED Plan. Alternative means of financing (primarily non-Federal) for a majority of the construction costs of the NED Plan would have to be identified and secured in order for the Secretary of the Interior to be able to recommend a construction authorization to Congress..." SLWRI Final Feasibility Report, p. 9-1.

<sup>11</sup> "[S]ignificant concerns have been raised by existing CVP water service and repayment contractors regarding water-supply benefits from the proposed project being made available to California SWP contractors outside the existing service area of the CVP. In part, their concern emanates from a desire to have water supply developed under any of the alternatives meet existing demands of Federal contractors within the existing CVP service area before being utilized to meet water supply needs of public water agencies that do not currently contract for delivery of CVP water." SLWRI Final Feasibility Report, p. 9-1.

<sup>12</sup> Reclamation's stated concerns here go to continued participation of the California Department of Water Resources (DWR) and state permitting agencies. SLWRI pp. 6-35-40. There is little apparent understanding that under Reclamation law, California law applies to Reclamation. California law is clear: CA PRC §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.

<sup>13</sup> Federal Reclamation law has been clear for more than two decades. "The Secretary, immediately upon the enactment of this title, shall operate the Central Valley Project to meet all obligations under state and federal law, including but not limited to the federal Endangered Species Act, 16 U.S.C. s 1531, *et seq.*, and all decisions of the California State Water Resources Control Board establishing conditions on applicable licenses and permits for the project. (1992 Central Valley Improvement Act, §3406(b) (in part)), title 34 Public Law 102-575.

<sup>14</sup> For a more extensive discussion of the preferred but not recommended issue, see Summary of Chapter Nine, Shasta Lake Water Resources Investigation (SLWRI) Final Feasibility Report and Environmental Impact Statement (EIS) Friends of the River et al., May 10, 2016, pp. 1, 5-6, 10-12. <http://www.friendsoftheriver.org/wp-content/uploads/2016/01/SLWRI-unresolved-issues-memo-May-10-2016-1.pdf>

<sup>15</sup> For the NED project, the estimated construction cost is \$1.265 billion plus \$105 million for interest on construction, making the total capital cost \$1.371 billion. Construction costs for all of the alternatives range from \$990 million to \$1.283 billion. Capital costs range from \$1.073 to \$1.291 billion (SLWRI Feasibility Report, p. 4-47 table 4-7). For the latest cost estimate, \$1.4 billion at this writing, see: <https://www.usbr.gov/mp/ncao/docs/sdrep-facts.pdf>. As noted, in

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March of 2019, Reclamation's construction engineer Richard Welsh told the SLDMWA executive director the estimated cost of the project was now \$2 billion.

<sup>16</sup> As of 2011, the unpaid reimbursable cost for irrigation and municipal and industrial purposes was \$1.3 billion. "Central Valley Project, California: Repayment Status And Payoff," Office of the Inspector General, U.S. Department of the Interior, Report No.: WR-EV-BOR-0003-2012, March 2013, p. 2.

<sup>17</sup> SLWRI Feasibility Report, pp. 6-9–13 especially tables 6-2 & 6-3.

<sup>18</sup> SLWRI Feasibility Report, pp. 4-87, 6-9, 6-10 table 6-1. But see SLWRI Feasibility Report pp. 8-5–6 for discussion of the Bureau's desire to cost-share fish & wildlife benefits in this project.

<sup>19</sup> The U.S. Fish & Wildlife Service said that the claimed benefit to salmonids was not "substantial" downstream of the Red Bluff pumping plant and "only provides minimal benefit" for spring and winter-run chinook salmon upstream. However, the proposed action, "by further restricting high water flows will result in additional losses of salmonid rearing and riparian habitat and adversely affect the recruitment and natural succession of riparian habitat along the Sacramento River and bypasses." The Service "was unable to support the adoption of any of the proposed [dam-raise] alternatives." United States Department of the Interior, Fish and Wildlife Service Draft Fish and Wildlife Coordination Act Report For the Shasta Lake Water Resources Investigation, Prepared for U.S. Bureau of Reclamation Sacramento, California, November 2015, (2015 CAR) p. xiii. [https://www.friendsoftheriver.org/wp-content/uploads/2020/10/FOR-Exhibit-01-USFWS\\_SLWRI-FWCAR\\_2015-Acro-10-compressed.pdf](https://www.friendsoftheriver.org/wp-content/uploads/2020/10/FOR-Exhibit-01-USFWS_SLWRI-FWCAR_2015-Acro-10-compressed.pdf).

<sup>20</sup> SLWRI Feasibility Report, pp. ES-19, ES-23 table ES-2.

<sup>21</sup> SLWRI Feasibility Report, p. 5-4 table 5-2.

<sup>22</sup> SLWRI Feasibility Report, pp. 1-9, 1-20.

<sup>23</sup> Media Release, "Californians Continue Meeting Governor's Water Conservation Mandate, *Savings Must Continue to Reach February 2016 Goal*," State Water Resources Control Board, October 1, 2015.

[http://www.waterboards.ca.gov/press\\_room/press\\_releases/2015/pr100115\\_aug\\_conservation.pdf](http://www.waterboards.ca.gov/press_room/press_releases/2015/pr100115_aug_conservation.pdf).

<sup>24</sup> SLWRI Feasibility Report, p. 6-25–30.

<sup>25</sup> SLWRI Feasibility Report, pp. 4-30 table 4-4,

<sup>26</sup> SLWRI Feasibility Report, pp. ES-44, 9-1–2. The now dated "Summary of Chapter Nine, Shasta Lake Water Resources Investigation (SLWRI) Final Feasibility Report and Environmental Impact Statement (EIS)" Friends of the River *et al.*, pp. 4–5. <http://www.friendsoftheriver.org/wp-content/uploads/2016/01/SLWRI-unresolved-issues-memo-May-10-2016-1.pdf>

<sup>27</sup> The report does not contain a breakdown of south of delta versus north of delta average annual delivery increases. Instead, it provides a breakdown of dry year delivery increases. See SLWRI Feasibility Report, pp. ES-28 table ES-3, 4-23 table 4-2.

<sup>28</sup> "Modifications of Shasta Dam and Reservoir could allow for increased system flexibility and further use of new Delta conveyance facilities, providing for even greater water supply reliability benefits." SLWRI Feasibility Report, p. 1-36. "All SLWRI comprehensive plans were formulated specifically to increase CVP and SWP water deliveries and water supply reliability. Isolated north Delta diversion facilities implemented as part of the BDCP could increase water deliveries to CVP and SWP SOD water users and improve water quality for urban and agricultural water users. Implementation of an enlarged Shasta Dam and Reservoir in combination with any BDCP alternative would likely provide greater water supply benefits than implementing either proposed project independently. Modifications of Shasta Dam and Reservoir could increase system flexibility and potential use of new Delta conveyance facilities, providing for even greater water supply reliability. However, the magnitude of the combined benefits is dependent upon type and size of conveyance facilities included in BDCP alternatives." SLWRI Feasibility Report, p. 6-30.

<sup>29</sup> The reservoir expansion would violate the California Wild & Scenic Rivers Act, in part, by impermissibly creating a new reservoir on a protected section of the McCloud River and the McCloud arm of Shasta Reservoir. California Public Resources Code §5093.542 (b).

<sup>30</sup> SLWRI Feasibility Report, pp. ES-2, ES-32, ES-35, ES-37, ES-39, 6-32–33 9-1. See endnote 10. See also Summary of Chapter Nine, Shasta Lake Water Resources Investigation (SLWRI) Final Feasibility Report and Environmental Impact Statement (EIS) Friends of the River *et al.*, pp. 1–5, <http://www.friendsoftheriver.org/wp-content/uploads/2016/01/SLWRI-unresolved-issues-memo-May-10-2016-1.pdf>

<sup>31</sup> See later discussion and accompanying endnotes and references in later sections of this fact sheet on the Water Infrastructure for the Nation Act of 2016 (WIIN).

<sup>32</sup> With regard to Proposition 1 bond act funding, see Chapter 4, 79711(e) "Nothing in this division [bond act] shall be construed to affect the California Wild and Scenic Rivers Act (Chapter 1.4 (commencing line 5 with Section 5093.50) of Division 5 of the Public Resources Code) or the federal Wild and Scenic Rivers Act (16 U.S.C. Sec. 1271 line 7 *et seq.*) and funds authorized pursuant to this division shall not be available for any project that could have an adverse effect on the values upon which a wild and scenic river or any other river is afforded protections pursuant to the California Wild and



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Scenic Rivers Act or the federal Wild and Scenic Rivers Act.” By regulation (California Code of Regulations Title 23. Waters. Division 7. California Water Commission, Chapter 1 Water Storage Investment Program, §6001(a)(10)), the Shasta Dam Project was excluded from the California Water Commission list of Water Supply Investment Program CALFED projects. Staff explained the exclusion: “Shasta Enlargement has been removed from the eligible projects list. Although certain CALFED projects are deemed eligible under Section 79751 (a), the exception in this Section incorporating by reference prohibitions in the Wild and Scenic Rivers Act, including Section 5093.542(c) of such Act, would preclude the enlargement of Shasta Dam from being an eligible project under current law.” [https://cwc.ca.gov/-/media/CWC-website/Files/Documents/2015/07\\_July/July2015\\_Agenda\\_Item\\_13\\_Attach\\_2\\_Summary\\_of\\_SAC\\_Comment\\_Letters.pdf](https://cwc.ca.gov/-/media/CWC-website/Files/Documents/2015/07_July/July2015_Agenda_Item_13_Attach_2_Summary_of_SAC_Comment_Letters.pdf). See comment I.D. EP-1.

<sup>33</sup> See SLWRI FEIS Executive Summary table S-3.

<sup>34</sup> “Three alternatives provide some tangible benefit for anadromous fish, CP4, CP4A, and CPS. CP4 provides for the dedication of 378,000 acre-feet of the cold-water pool for the purpose of maintaining the required downstream temperatures below Keswick Dam. CP4A would dedicate half that amount of the cold-water pool, 191,000 acre-feet, for water management to benefit anadromous fish. CP4, CP4A, and CPS include a plan for proposed increase of riparian, floodplain, and/ or side channel habitat between Keswick Dam and the REPP. Only one alternative (CP4) provides any substantial benefit to anadromous fish survival; however, alternate CP4, in the majority of years, would result in either negligible or slightly negative impacts to Chinook salmon survival overall. In about 90 percent of the years, there would be no benefit to anadromous fish survival. Even in CP4, the benefits of an enlarged cold water pool for each of the four runs of Chinook salmon are limited to a few critical and dry water years representing 6–16 percent of the water years, based on the 1922–2002 period of simulation. Simulations based on current Chinook salmon population levels (i.e., 1999–2006 population average) and predicted higher future Chinook salmon population levels (i.e., Anadromous Fish Restoration Program [AFRP] population goals) show that increases in immature smolt production of winter-, fall-, and late fall-run Chinook salmon relative to No Action in excess of 10 percent occurred in only 5–11 percent of the years simulated. Increases in springrun Chinook salmon immature smolt production of greater than 10 percent occurred in 15–16 percent of the years simulated. The modelling results do not take into account the conditions that would exist within the Sacramento River and the Delta and how that would affect the overall production and survivability of Chinook salmon.” (2015 CAR, p. viii)

“For the period of 81 years (1922–2002) used for Reclamation’s modeling (SALMOD), no significant (an increase or decrease of greater than, or equal to 5 percent) change in overall production for any of the Chinook salmon runs (winter-run, spring-run, fall-run, and late fall-run) resulted from any of the proposed alternatives (CP1, CP2, CP3, CP4, CP4A, and CPS) compared to either the No-Action Alternative (Future Conditions 2030) or the Existing Condition (2005).” (2015 CAR, p. ix)

“Based on the Service’s evaluation of the information available, as contained in this report, as well as evaluations contained in the EIS and associated documents provided by Reclamation, the Service has determined that the proposed project does not provide substantial benefits to fish and wildlife resources within the Shasta Lake pool or the adjacent upland habitats. The Service has also determined that the proposed project does not provide any substantial benefit to anadromous fish downstream of the RBPP and only provides minimal benefit to anadromous fish (winter- and spring-run Chinook salmon) upstream of the RBPP. It is the Service’s opinion that based on the existing information; the proposed action, by further restricting high water flows, will result in additional losses of salmonid rearing and riparian habitat, and adversely affect the recruitment and natural succession of riparian forest along the Sacramento River and bypasses. Upon consideration of the information provided to date, the level of potential impacts to fish and wildlife resources, and the lack of specificity on potential mitigation and compensation measures the Service is unable to support the adoption of any of the proposed action alternatives.” (2015 CAR, p. xiii.)

[https://www.friendsoftheriver.org/wp-content/uploads/2020/10/FOR-Exhibit-01-USFWS\\_SLWRI-FWCAR\\_2015-Acro-10-compressed.pdf](https://www.friendsoftheriver.org/wp-content/uploads/2020/10/FOR-Exhibit-01-USFWS_SLWRI-FWCAR_2015-Acro-10-compressed.pdf).

<sup>35</sup> Ibid pp. x–xi.

<sup>36</sup> SLWRI Feasibility Report, p. 5-15 table 5-8.

<sup>37</sup> SLWRI Feasibility Report, pp. 14-3–5, 14-9–11.

<sup>38</sup> SLWRI Feasibility Report, pp. 14-24.

<sup>39</sup> The inundated acreage estimate can be found in the sequential incremental estimates for the three examined dam-raise heights: (SLWRI Feasibility Report, pp. 4-42 [1,100 acres], 4-52 [1,900 acres], and 4-72 [2,600 acres]). The 20.5-foot reservoir expansion alternatives sum to 5,600 inundated acres.

<sup>40</sup> SLWRI Feasibility Report, pp. ES-3, 1-5, 6-38. “The primary purposes of the [Whiskeytown-Shasta-Trinity] National Recreation Area are (1) public outdoor recreation benefits and (2) the conservation of scenic, scientific, historic, and other values which contribute to public enjoyment of the recreation resources...” (Public Law 89-336) Management

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Guide, Shasta and Trinity Units, Whiskeytown-Shasta-Trinity National Recreation Area, Shasta Trinity National Forest, 2014, p. 1-2. For an area map, see: <https://www.friendsoftheriver.org/wp-content/uploads/2020/10/Shasta-Trinity-National-Forest-Map.png>

<sup>41</sup> SLWRI FEIS, pp. 17-28-30. SLWRI Feasibility Report, p. 4-19 table 4-1.

<sup>42</sup> The California Wild & Scenic Rivers Act prohibits new dam and reservoir construction that would increase reservoir levels above the McCloud River Bridge (California Public Resources Code §5093.542 (b)). The bridge is a bit more than a mile (5,440 feet) downstream of the current reservoir gross (full) pool and approximately one and two thirds of a mile (5,440 feet plus 3550 feet, the latter above current gross pool) downstream of the gross (full) pool that would be formed in the 18.5-foot dam raise alternatives (SLWRI FEIS, pp. 25-4-5, 25-36-40). The SLWRI FEIS map (Figure 25-2, p. 25-5) depicts both of the preceding reaches (McCloud River Bridge up to current gross pool elevation of 1070', and from the current gross pool elevation of 1070' to 1090', the approximate gross pool elevation of the 20.5-ft preferred-alternative reservoir elevation increase). It also depicts some of the potential river-bed area subject to yearly high-pool reservoir inundation, treated as elevation 1020 feet (upper limit of "lake" in critical dry year) to elevation 1070 feet (present gross pool). According to the SLWRI FEIS (pp. 25-4-5), this reach is treated by the USFS Shasta-Trinity National Forest Land and Resource Management Plan in 1994 as part of the reservoir. This reach is called the transition reach in the SLWRI FEIS (pp. 25-3-4) since the reservoir yearly high pool is usually within this reach. Referring to the lineal distance from reservoir elevation 1020 ft. to expanded reservoir elevation 1090 ft., the 20.5-ft. reservoir raise is described as increasing the length of this new "transition" reach to 12,550 lineal feet or 2.38 miles (SLWRI FEIS, p. 25-37). It may also be relevant that under the lowest of the dam-raise alternatives (the 6.5-ft. CP1 dam raise), the reservoir gross pool would rise to 1,078 feet, inundating 1470 lineal feet of the McCloud River upstream of the current Shasta Reservoir gross pool (SLWRI FEIS p. 25-27). The SLWRI FEIS wild & scenic rivers chapter can be found here: <https://www.friendsoftheriver.org/wp-content/uploads/2019/05/SLWRI-FEIS-Chapter-25-ws.pdf>.

<sup>43</sup> SLWRI FEIS, pp. 25-6-7, 25-37-39. After finding the free-flowing reach of the McCloud River eligible for national wild and scenic river designation and therefore eligible for administrative protection under Forest Service policy, the Forest Service deferred a suitability determination for the McCloud River, asserting that a Coordinated Resources Management Plan CRMP would provide protection. In the event that CRMP protection "fails to protect the values which render the river suitable for designation then the Forest Service will consider recommendation to the National Wild and Scenic River System." (Record of Decision, Final Environmental Impact Statement, Land and Resource Management Plan Shasta-Trinity National Forests, USDA, Forest Service, April 28, 1995, p. 17.) The reservoir raise would also partially inundate two inventoried Forest Service Roadless Areas, Devil's Rock and Backbone Ridge protected by the Forest Service Roadless Area Conservation Rule (36 CFR Part 294). See CalWild's comments on both:

<https://www.friendsoftheriver.org/wp-content/uploads/2019/01/CalWild-Shasta-Dam-Raise-Scoping-Comments.pdf>.

See also similar roadless area comments of Friends of the River et al. on the SLWRI draft supplemental EIS, pp. 64-67:

<https://www.friendsoftheriver.org/wp-content/uploads/2021/02/FOR-et-al-SLWRI-DSEIS-comments.pdf>.

It should also be noted that there may be some confusion between documents on the existing gross pool of Shasta Reservoir, described as elevation 1070 feet msl at SLWRI FEIS p. 25-4. The Shasta Dam and Lake, Sacramento River, Report on Reservoir Regulation for Flood Control, Appendix 1 to Master Manual of Reservoir Regulation, Sacramento River Basin, California, April 1952, Rev. January 1977, Department of the Army, Sacramento District, Corps of Engineers, Sacramento California, Shasta Dam and Lake, Sacramento River, California, Pertinent Data describes the gross pool at elevation 1067. This is likely because two msl datum are used: "Two elevation datum are referenced in text and figures herein and in the accompanying EIS. The National Geodetic Vertical Datum of 1929 (NGVD29) is used in reference to Shasta Dam and appurtenant facility designs. The North American Vertical Datum of 1988 (NAVD88) is used in reference to Shasta Reservoir inundation pool elevations, and the elevations of potential reservoir area infrastructure that may need to be modified or relocated to accommodate increased water levels, consistent with a 2001 aerial survey of the reservoir area that referenced the NAVD88 datum. The NGVD88 is 2.66 feet higher than NGVD29" (SLWRI Feasibility Report, p. 2-19). Again, any potential discrepancy or confusion between or within documents relating to the vertical datum used can usually be resolved by careful reading. Regardless, any pool-elevation discrepancies are not of relevance given that all the SLWRI pool-elevation/dam-raise alternatives raise the reservoir gross pool by 8.5 to 20.5 feet.

<sup>44</sup> SLWRI FEIS pp. 25-36-40.

<sup>45</sup> California Wilderness Coalition and Friends of the River's comments on the draft feasibility report, January 28, 2013. pp. 4-5. <https://www.friendsoftheriver.org/our-work/rivers-under-threat/sacramento-threat-shasta/> Resources, Comments & Documents, Shasta Dam raise, Comments of Friends of the River and Other Environmental Groups.



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<sup>46</sup> 2014 CAR, pp. xi–xiii. [https://www.friendsoftheriver.org/wp-content/uploads/2020/10/FOR-Exhibit-01-USFWS\\_SLWRI-FWCAR\\_2015-Acro-10-compressed.pdf](https://www.friendsoftheriver.org/wp-content/uploads/2020/10/FOR-Exhibit-01-USFWS_SLWRI-FWCAR_2015-Acro-10-compressed.pdf). See also botanical, fisheries and aquatic ecosystems, and wildlife, sections of table S-3 in the SLWRI FEIS executive summary.

<sup>47</sup> SLWRI FEIS p. S-4.

<sup>48</sup> SLWRI FEIS p. S-72 table 3.

<sup>49</sup> November 2015 CAR, pp. 164–165. The Bureau, however, believes that there are no significant Delta impacts (SLWRI FEIS pp. S-72–73). In their comments, however, the California Department of Fish and Wildlife (CDFW) emphasized the lack of information that they possessed to analyze the FEIS preferred but not recommended alternative (CP4A): “While the Department participated in the SLWRI in its current iteration since 2000 and is a member of the SLWRI Project Coordination Team, we were not aware of the development of a new alternative, CP4A. The lack of detailed information on Alternative CP4A, now the preferred alternative, hampered our ability to provide a thorough review of the CAR. Our review and comments are therefore based solely on the content of the CAR, with the acknowledgement that additional information may have affected our response. In addition, the CAR repeatedly states that, “... there is insufficient information provided ... to analyze the effects ...,” or “... the Service is unable to analyze the effects ... due to insufficient information on project details.” (California Department of Fish and Wildlife Comments on the U.S. Department of the Interior, U.S. Fish and Wildlife Service, Fish and Wildlife Coordination Act Report for the Proposed Shasta Dam Enlargement Project, Shasta Lake Water Resources Investigation, February 13, 2015, p. 1–2.) Reclamation’s SLWRI project manager Michelle Denning’s forward to the U.S. Fish and Wildlife Service about the CDFW comments (available at [http://www.friendsoftheriver.org/wp-content/uploads/2016/01/20150214-Fwd\\_-CDFW-cmts-Adobe-OCR.pdf](http://www.friendsoftheriver.org/wp-content/uploads/2016/01/20150214-Fwd_-CDFW-cmts-Adobe-OCR.pdf)) notes that CDFW no longer had a review function except through the Fish and Wildlife Coordination Act Report once the federal FEIS was no longer accompanied by a California Environmental Quality Act (CEQA) environmental impact report (EIR) because Reclamation had determined that “there were no imminent CEQA compliance activities for raising.” The SLWRI Feasibility Report was somewhat more candid: “From discussions with the State, it is our understanding there has been a determination that the PRC protecting the McCloud River prohibits State participation in the planning or construction of enlarging Shasta Dam other than participating in technical and economic feasibility studies.” (p. 9-1)

The November 2014 CAR carries the word “draft.” However, according to internal correspondence within the U.S. Fish & Wildlife Service, the “draft” annotation was a mistake. The November version was intended to be final. <https://www.friendsoftheriver.org/wp-content/uploads/2019/07/20141209-November-2014-Version-of-Shasta-FWCAR.pdf>. The CAR was forwarded to Reclamation by the Field Supervisor, Bay-Delta U.S. Fish and Wildlife Office Sacramento, California on November 24, 2014. However, something was soon amiss. The Fish & Wildlife Service prepared talking points for Secretary of the Interior Sally Jewell’s February 6, 2015, trip to Sacramento, asserting that the 2014 CAR had been forwarded to Reclamation by mistake and that they had been rescinded for internal and NMFS review. <https://www.friendsoftheriver.org/wp-content/uploads/2019/07/20150205-Talking-points-for-Sec-Jewell-hi-lighted.pdf>. On February 13, 2015, Reclamation’s SLWRI project manager Michelle Denning notes in her comments to the Fish & Wildlife Service about the CDFW 2014 CAR comments that apparently no one had informed CDFW that the 2014 CAR had been “rescinded to allow for higher level review.” [http://www.friendsoftheriver.org/wp-content/uploads/2016/01/20150214-Fwd\\_-CDFW-cmts-Adobe-OCR.pdf](http://www.friendsoftheriver.org/wp-content/uploads/2016/01/20150214-Fwd_-CDFW-cmts-Adobe-OCR.pdf). The 2014 CAR was obtained by a Freedom of Information Act request. <http://www.friendsoftheriver.org/wp-content/uploads/2016/01/28-Shasta-Dam-Car-Revised.pdf>. A response to the rescinded 2014 CAR (presumably) was prepared by Reclamation. See Final Fish and Wildlife Coordination Act Recommendations for the Shasta Lake Water Resources Investigation Appendix, April 2015 at Reclamation’s SLWRI FEIS website. [https://www.usbr.gov/mp/nepa/nepa\\_project\\_details.php?Project\\_ID=1915](https://www.usbr.gov/mp/nepa/nepa_project_details.php?Project_ID=1915). The San Jose Mercury News published a news article covering reactions to the rescinded report. See: [http://www.mercurynews.com/science/ci\\_27406666/plan-raise-shasta-dam-takes-hit-after-federal](http://www.mercurynews.com/science/ci_27406666/plan-raise-shasta-dam-takes-hit-after-federal). A year later, the U.S. Fish & Wildlife Service’s November 2015 SLWRI Fish & Wildlife Coordination Act Report (2015 CAR) covered Reclamation’s late-developing preferred alternative, 4a. As before, the 2015 CAR recommended a number of actions that were not included in the SLWRI FEIS alternatives. The actions were to mitigate impacts of the action alternatives and achieve project objectives. In the end, however, the 2015 CAR did not reach different conclusions than the 2014 CAR. For example:

Based on the Service’s evaluation of the information available, as contained in this report, as well as evaluations contained in the EIS and associated documents provided by Reclamation, the Service has determined that the proposed project does not provide substantial benefits to fish and wildlife resources within the Shasta Lake pool or the adjacent upland habitats. The Service has also determined that the proposed project does not provide any substantial benefit to anadromous fish downstream of the RBPP and only provides minimal benefit to anadromous fish (winter- and spring-run Chinook salmon) upstream of the RBPP. It is the Service’s opinion that based on the

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existing information; the proposed action, by further restricting high water flows, will result in additional losses of salmonid rearing and riparian habitat, and adversely affect the recruitment and natural succession of riparian forest along the Sacramento River and bypasses. Upon consideration of the information provided to date, the level of potential impacts to fish and wildlife resources, and the lack of specificity on potential mitigation and compensation measures the Service is unable to support the adoption of any of the proposed action alternatives. (2015 CAR p. xiii)

[https://www.friendsoftheriver.org/wp-content/uploads/2020/10/FOR-Exhibit-01-USFWS\\_SLWRI-FWCAR\\_2015-Acro-10-compressed.pdf](https://www.friendsoftheriver.org/wp-content/uploads/2020/10/FOR-Exhibit-01-USFWS_SLWRI-FWCAR_2015-Acro-10-compressed.pdf).

<sup>50</sup> The WIIN can be found here: <https://www.friendsoftheriver.org/wp-content/uploads/2020/12/PLAW-114publ322.pdf>.

<sup>51</sup> WIIN §4013.

<sup>52</sup> WIIN §4007(i)

<sup>53</sup> <https://www.usbr.gov/mp/nao/docs/sdrep-faq.pdf>.

<sup>54</sup> This determination is supposed to be contingent on several matters. WIIN § 4007(b) (3) COMMENCEMENT. — The construction of a federally owned storage project that is the subject of an agreement under this subsection shall not commence until the Secretary of the Interior—

(A) determines that the proposed federally owned storage project is feasible in accordance with the reclamation laws; (B) secures an agreement providing upfront funding as is necessary to pay the non-Federal share of the capital costs; and

(C) determines that, in return for the Federal cost-share investment in the federally owned storage project, at least a proportionate share of the project benefits are Federal benefits, including water supplies dedicated to specific purposes such as environmental enhancement and wildlife refuges.

We are not aware of any meaningful explanation of how the determination was reached.

<sup>55</sup> 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.,” (WIIN Funding Report)

<http://www.friendsoftheriver.org/wp-content/uploads/2018/03/Adm-rprt-on-2018-CA-reservoir-enlargement-approps-request-ocr.pdf>. See pp. 3 and 4 for the “Secretarial Determination for Commencement of Construction for the dam raise.”

<sup>56</sup> WIIN Funding Report. <http://www.friendsoftheriver.org/wp-content/uploads/2018/03/Adm-rprt-on-2018-CA-reservoir-enlargement-approps-request-ocr.pdf> See pp. 1, 3, 6. WIIN § 4007(b) (3) COMMENCEMENT. — The construction of a federally owned storage project that is the subject of an agreement under this subsection shall not commence until the Secretary of the Interior — ...(B) secures an agreement providing upfront funding as is necessary to pay the non-Federal share of the capital costs...

<sup>57</sup> SLWRI FEIS 25-40.

<sup>58</sup> For an analysis of the WIIN, see Friends of the River memo to files: <https://www.friendsoftheriver.org/wp-content/uploads/2021/02/FOR-WIIN-CA-storage-provisions-memo-2-11-2021.pdf>.

The provisions of interest that touch on requirements to follow federal and state law are the following: § 4007(b) Federally Owned Storage Projects (4) ENVIRONMENTAL LAWS. — In participating in a federally owned storage project under this subsection, the Secretary of the Interior shall comply with all applicable environmental laws, including the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.). § 4007(j). Consistency with State Law: Nothing in this section preempts or modifies any obligation of the United States to act in conformance with applicable State law. § 4012. Savings Language. Subtitle J, California, should not be interpreted or implemented in a manner that preempts state law, affects obligations of the Central Valley Improvement Act (except for the Stanislaus River predator program), changes the Endangered Species Act (ESA), would cause additional adverse effects on fish species, and affects obligations of the Pacific Fishery Management Council under the ESA or Magnuson Stevens Act to manage California to Washington coastal fisheries.

<sup>59</sup> See various press accounts from March 2018 and later for stories about Congressional maneuverings to advance or defeat the proposed dam raise at Legislative/Congressional/Trump Administration attempts to advance the Shasta Dam – Press and Related Documents at the Friends of the River website. <https://www.friendsoftheriver.org/our-work/rivers-under-threat/sacramento-threat-shasta/>

<sup>60</sup> <https://www.friendsoftheriver.org/wp-content/uploads/2019/09/2009-Westlands-Interior-Agreement-in-Principle.pdf>. <https://www.friendsoftheriver.org/wp-content/uploads/2019/09/2014-Westlands-Interior-Agreement-in-Principle.pdf>.

<sup>61</sup> Minutes of the February 20, 2018, meeting of the Board of Directors of the Westlands Water District, pp. 11–12. <https://www.friendsoftheriver.org/wp-content/uploads/2019/04/WWD-February-2018-board-minutes-ocr.pdf>.

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<sup>62</sup> For a contemporary press clip on the Bollibokka Club purchase, see <https://www.friendsoftheriver.org/wp-content/uploads/2018/05/Land-sale-fuels-fear-of-higher-dam-at-Shasta-SF-Chron-1-28-2007.pdf>. According to Westlands' financial statements, in 2007 Westlands purchased 3,000 acres of property along the McCloud River "to facilitate the raising of Shasta Dam by the U.S. Department of the Interior." This property is known as the Bollibokka Fishing Club. Westlands acquired it for more than \$32,000,000. <https://www.friendsoftheriver.org/wp-content/uploads/2019/05/Bollibokka-WWD-audited-financial-statements-2018.pdf>

<sup>63</sup> Minutes of the February 20, 2018, meeting of the Board of Directors of the Westlands Water District, p. 12. <https://www.friendsoftheriver.org/wp-content/uploads/2019/04/WWD-February-2018-board-minutes-ocr.pdf>.

<sup>64</sup> [https://www.friendsoftheriver.org/wp-content/uploads/2018/06/2018\\_0308\\_Board\\_Minutes\\_Approved\\_Post.pdf](https://www.friendsoftheriver.org/wp-content/uploads/2018/06/2018_0308_Board_Minutes_Approved_Post.pdf)  
<http://www.friendsoftheriver.org/wp-content/uploads/2018/03/SLDMWA-letter-to-USBR-re-Shasta-Dam.pdf>

<sup>65</sup> <http://www.friendsoftheriver.org/wp-content/uploads/2018/03/Final-letter-to-SLDMWA-re-Shasta-Dam-PRC-violation-3-22-18.pdf>.

<sup>66</sup> The SLDMWA is a joint powers authority comprising water districts, two reclamation districts, a canal company, and a city with the powers held in common by the members. One or more or all of the water district members of the Authority are special districts. Cal. Gov. Code § 16271(d) defines special districts as agencies of the state. The Authority would seem to meet the definition of a special district ("Special district" means any agency of the state for the local performance of governmental or proprietary functions within limited boundaries.") Westlands is specifically defined by statute as an agency of the state. Cal. Water Code § 37823. The California Wild & Scenic Rivers Act imposes further specific duties on agencies of the state: "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*) Cal. Pub. Res. Code § 5093.542(c). Local governments such as the City of Tracy (the lone city member of SLDMWA) are subject to the following CAWSRA code section, which requires conformance to the policy section of the Act. "...All local government agencies shall exercise their powers granted under any other provision of law in a manner consistent with the policy and provisions of this chapter." Cal. PRC §5093.61. [*"this chapter" is the PRC code wild & scenic river chapter*]. The pertinent policy section of the CAWSRA is as follows: "It is the policy of the State of California that certain rivers which possess extraordinary scenic, recreational, fishery, or wildlife values shall be preserved in their free-flowing state, together with their immediate environments, for the benefit and enjoyment of the people of the state. The Legislature declares that such use of these rivers is the highest and most beneficial use and is a reasonable and beneficial use of water within the meaning of Section 2 of Article X of the California Constitution." PRC §5093.50 (*emphasis added*)

These provisions and policy responsibilities make cooperation with Reclamation by the Authority or its members unlawful.

<sup>67</sup> For various press accounts on Westlands' and SLDMWA's reaction to legal opposition to their proposed cooperation with Reclamation to raise the dam see "Legislative/Congressional/Trump Administration attempts to advance the Shasta Dam – Official Documents, response, and commentary," "Lawsuits," and "Press" at the Friends of the River website. <https://www.friendsoftheriver.org/our-work/rivers-under-threat/sacramento-threat-shasta/>

<sup>68</sup> <https://www.friendsoftheriver.org/wp-content/uploads/2018/09/Questions-for-the-Record-Shasta-Dam-raise.rtf>

<sup>69</sup> See endnotes 42, 43, and 52.

<sup>70</sup> [https://www.feinstein.senate.gov/public/\\_cache/files/7/d/7d7ac75f-d7a4-43a4-af7c-11714962d519/846D0949097CC5EF4265C6ED7377291D.drought-bill-text.pdf](https://www.feinstein.senate.gov/public/_cache/files/7/d/7d7ac75f-d7a4-43a4-af7c-11714962d519/846D0949097CC5EF4265C6ED7377291D.drought-bill-text.pdf)

<sup>71</sup> § 4007(i) Sunset - This section shall apply only to federally owned storage projects and State-led storage projects that the Secretary of the Interior determines to be feasible before January 1, 2021. § 4013. Duration - Subtitle J, California, expires five years from the date of enactment with the exception of § 4007 storage projects already under construction.

<sup>72</sup> <https://www.friendsoftheriver.org/wp-content/uploads/2019/07/FOR-memo-on-selected-DRWSIA-provisions.pdf>

<sup>73</sup> <https://www.friendsoftheriver.org/wp-content/uploads/2021/02/2021-2-03-Valadao-introduces-WIIN-extension-Kingsburg-Recorder.pdf>. <https://www.friendsoftheriver.org/wp-content/uploads/2021/02/2021-2-8-Valadao-wants-to-renew-WIIN-Western-Farm-Press.pdf>.

<sup>74</sup> <https://www.friendsoftheriver.org/wp-content/uploads/2019/09/WWD-Sept-18-2019-meeting-papers-on-cost-sharing-EIR.pdf>.

<sup>75</sup> <https://www.wwd.ca.gov/wp-content/uploads/2018/11/shasta-dam-raise-eir-press-release.pdf>  
<https://www.wwd.ca.gov/wp-content/uploads/2018/11/shasta-dam-raise-eir-nop-scoping-checklist.pdf>

<sup>76</sup> <https://www.friendsoftheriver.org/wp-content/uploads/2019/01/FOR-et-al-scoping-comments-SDRP-rev2.pdf>  
<https://www.friendsoftheriver.org/wp-content/uploads/2019/01/CalWild-Shasta-Dam-Raise-Scoping-Comments.pdf>

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[https://www.friendsoftheriver.org/wp-content/uploads/2019/01/Scoping-Comments-on-WWD-CEQA\\_A1b.pdf](https://www.friendsoftheriver.org/wp-content/uploads/2019/01/Scoping-Comments-on-WWD-CEQA_A1b.pdf)

<sup>77</sup> See “Review of the Initial Study and Notice of Preparation for the Shasta Dam Raise Project, State Clearinghouse Number 2018111058, Shasta and Tehama Counties,” from Tina Bartlett, Regional Manager, California Department of Fish & Wildlife, November 14, 2018, pp. 4 & 5. [https://www.friendsoftheriver.org/wp-content/uploads/2019/01/CEQA-2018-0321\\_SHA\\_TEH\\_WWD\\_Shasta-Dam-Raise-Project\\_NOP-ocr.pdf](https://www.friendsoftheriver.org/wp-content/uploads/2019/01/CEQA-2018-0321_SHA_TEH_WWD_Shasta-Dam-Raise-Project_NOP-ocr.pdf)

<sup>78</sup> CA Public Resources Code §5093.542(c)

<sup>79</sup> See Comments on Westlands Water District’s Initial Study/notice of Preparation for the Shasta Dam Raise Project, Shasta County, from Eileen Sobek, Executive Director, State Water Resources Control Board, November 14, 2018, pp. 1–3.

[https://www.friendsoftheriver.org/wp-content/uploads/2019/01/WQC\\_NFisch.JKSahota.-Comments-on-Shasta-Dam-Raise-Project.pdf](https://www.friendsoftheriver.org/wp-content/uploads/2019/01/WQC_NFisch.JKSahota.-Comments-on-Shasta-Dam-Raise-Project.pdf)

<sup>80</sup> For Friends of the River *et al.* complaint, see <https://www.friendsoftheriver.org/wp-content/uploads/2019/05/2019-0513-FOR-et-al-Shasta-Dam-Complaint-ocr.pdf>. For FOR *et al.* joint press release, see [https://www.friendsoftheriver.org/wp-content/uploads/2019/05/Joint-Press-Release\\_Shasta\\_Final.pdf](https://www.friendsoftheriver.org/wp-content/uploads/2019/05/Joint-Press-Release_Shasta_Final.pdf). For Friends of the Rivers’ press release, see <https://www.friendsoftheriver.org/wp-content/uploads/2019/05/Press-Release-Suit-Filed-to-Stop-Shasta-Dam-Raise.pdf>. For Earthjustice’s press release, see <https://earthjustice.org/news/press/2019/fishing-and-conservation-groups-sue-country-s-largest-agricultural-water-district-over-illegal-plot-to-raise>. For the CA Attorney General’s press release, see <https://oag.ca.gov/news/press-releases/attorney-general-becerra-sues-westlands-water-district-block-unlawful-shasta-dam>. For the CA Attorney General’s complaint, see <https://www.friendsoftheriver.org/wp-content/uploads/2019/05/people-v-westlands-complaint-declaratory-injunctive-relief-shasta-dam-ocr.pdf>.

<sup>81</sup> <https://www.friendsoftheriver.org/wp-content/uploads/2019/06/2019-0612-WWD-Memo-ISO-Mot-to-Transfer-Venue.pdf>.

<sup>82</sup> <https://www.friendsoftheriver.org/wp-content/uploads/2019/06/2019-0612-AGs-Memo-ISO-Motion-for-PI.pdf>

<sup>83</sup> We don’t have a copy of the filed North Coast Rivers Alliance/San Francisco Crab Boat Owners Association complaint against Westlands at this time. Theirs and other relevant lawsuit materials will be posted as they become available in the “Lawsuits” section of the following webpage: <https://www.friendsoftheriver.org/our-work/rivers-under-threat/sacramento-threat-shasta/>

<sup>84</sup> <https://www.friendsoftheriver.org/wp-content/uploads/2019/07/2019-0708-Opp-Motion-to-Transfer-Venue.pdf>.

For accompanying documents, see the “Lawsuits” section of the following webpage:

<https://www.friendsoftheriver.org/our-work/rivers-under-threat/sacramento-threat-shasta/>. For the AG’s opposition brief, see <https://www.friendsoftheriver.org/wp-content/uploads/2019/07/2019-0708-Peoples-Opposition-to-Motion-to-Transfer.pdf>

<sup>85</sup> <https://www.friendsoftheriver.org/wp-content/uploads/2019/08/2019-07-28-Tentative-Ruling-on-PI.pdf>

<https://www.friendsoftheriver.org/wp-content/uploads/2019/08/2019-0731-Order-Granting-PI.pdf>

<sup>86</sup> <https://www.friendsoftheriver.org/wp-content/uploads/2019/08/Judge-blocks-Westlands-Reclamation-response-hi-lighted-Redding-Searchlight-7-31-2019-1.pdf>

<sup>87</sup> <https://www.friendsoftheriver.org/wp-content/uploads/2019/09/Cal-Supremes-weigh-in-on-Shasta-case-Redding-Searchlight-9-25-2019.pdf>

<sup>88</sup> <https://www.friendsoftheriver.org/wp-content/uploads/2019/08/2019-0812-Verified-Petition-for-Writ-of-Mandate -MPA.pdf>

<sup>89</sup> <https://www.friendsoftheriver.org/wp-content/uploads/2019/08/2019-0829-Order-denying-writ-petition.pdf>

<https://www.friendsoftheriver.org/wp-content/uploads/2019/08/Preliminary-injunction-upheld-Redding-Searchlight-8-29-2019.pdf>

<sup>90</sup> <https://www.friendsoftheriver.org/wp-content/uploads/2019/09/2019-09-06-Petition-for-Review.pdf>

<https://www.friendsoftheriver.org/wp-content/uploads/2019/09/Cal-Supremes-weigh-in-on-Shasta-case-Redding-Searchlight-9-25-2019.pdf>

<sup>91</sup> <https://www.friendsoftheriver.org/wp-content/uploads/2019/09/2019-0830-Motion-to-Strike-Memorandum.pdf>

<sup>92</sup> <https://www.friendsoftheriver.org/wp-content/uploads/2019/09/2019-0924-Opposition-to-Motion-to-Strike.pdf>

<sup>93</sup> <https://www.friendsoftheriver.org/wp-content/uploads/2019/09/Westlands-terminates-Shasta-Dam-raise-EIR-Mavens-Sept-30-2019.pdf>

<sup>94</sup> <https://www.friendsoftheriver.org/wp-content/uploads/2019/10/Westlands-drops-EIR-will-do-CA-WSRA-analysis-Politico-9-30-2019.pdf>

<sup>95</sup> <https://oag.ca.gov/news/press-releases/attorney-general-becerra-secures-settlement-against-westlands-water-district>, <https://www.friendsoftheriver.org/wp-content/uploads/2019/11/2019-11-07-FILED-Stipulation-for-Entry-of-Judgment.pdf>,



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[Hold-Up-Plan-to-Raise-Shasta-Earthjustice-press-release-Nov-8-2018.pdf](#), <https://www.friendsoftheriver.org/wp-content/uploads/2019/11/Westlands-pulls-out-enviros-still-worry-Sac-Bee-Nov-8-2019-1.pdf>, <https://www.nrdc.org/experts/drevet-hunt/nodamraishasta-settlement>

<sup>96</sup> <https://www.friendsoftheriver.org/wp-content/uploads/2019/11/2019-1120-Notice-of-Entry-of-Stipulated-Judgment.pdf>

<sup>97</sup> <https://www.friendsoftheriver.org/wp-content/uploads/2019/11/DJ-2019-11-11-WestlandsWD.pdf>

<sup>98</sup> <https://www.friendsoftheriver.org/wp-content/uploads/2019/12/GGSA-et-al-FOIA-1-Complaint.pdf>

<https://www.friendsoftheriver.org/wp-content/uploads/2020/03/March-23-2020-FOIA-Complaint.pdf>

<https://www.friendsoftheriver.org/wp-content/uploads/2020/03/Admin-Motion-to-Relate-Cases-Final.pdf>

<sup>99</sup> <http://www.friendsoftheriver.org/wp-content/uploads/2018/03/Adm-rprt-on-2018-CA-reservoir-enlargement-approps-request-ocr.pdf>

<sup>100</sup> <https://www.usbr.gov/mp/ncao/docs/sdrep-facts.pdf>. For a Reclamation map that shows Shasta Reservoir facilities that would need to be modified to accommodate the 20.5-ft reservoir raise, see:

<https://www.friendsoftheriver.org/wp-content/uploads/2019/05/SDREP-needed-modifications-USBR-Oct-2018.pdf>.

<sup>101</sup> [https://www.friendsoftheriver.org/wp-content/uploads/2018/12/Shasta\\_Salamander\\_Complaint.pdf](https://www.friendsoftheriver.org/wp-content/uploads/2018/12/Shasta_Salamander_Complaint.pdf)

<sup>102</sup> SLWRI FEIS, Executive Summary table S-3, p. S-85. SLWRI FEIS, chapter 13, p. 182.

<sup>103</sup> <https://www.friendsoftheriver.org/wp-content/uploads/2021/05/2021-5-4-Feds-deny-salamander-protection-EE-News.pdf>.

<sup>104</sup> <https://www.friendsoftheriver.org/wp-content/uploads/2019/01/Dam-raise-sets-up-showdown-KQED-Jan-28-2019.pdf>

<sup>105</sup> <https://www.watereducation.org/western-water/californias-new-natural-resources-secretary-takes-challenge-implementing-gov-newsoms>

<sup>106</sup> <https://www.usbr.gov/mp/ncao/docs/sdrep-overview-101518.pdf> (accessed January 26, 2023)

<sup>107</sup> <https://www.usbr.gov/mp/ncao/docs/sdrep-faq.pdf>. <https://www.usbr.gov/mp/ncao/shasta-enlargement.html>. (accessed January 26, 2023)

<sup>108</sup> <https://www.usbr.gov/mp/docs/hydro-memo.pdf>. Section 3(II).

<sup>109</sup> See March 6, 2019, email from the chief operating officer to Westlands to: lbair@rd108.com; tbettner@gcid.net; jsutton@tccanal.com; cwhite@ccidwater.org; jphillips@friantwater.org; jpayne@friantwater.org; afecko@pcwa.net; Federico Barajas; rjacobsma@ccwater.com; elimas@ltrid.org; sdalke@kern-tulare.com; jpeifer@cityofsacramento.org; vlucchesi@pattersonid.org; and J. Scott Petersen with carbon copies to: Johnny Amaral; Karen Clark kclark@westlandswater.org; mpatil@ccwater.com; and Dan Pope. The note entitled “Update on Shasta Dam Raise Project” in part said:

We want to continue the discussion we started last month regarding the option to have Westlands sign a cost sharing agreement with Reclamation and serve as the local cost share partner, and to develop repayment agreements for Westlands to be repaid by CVP contractors.

Exhibit I, Declaration of Nina C. Robertson in Support of Request for Judicial Notice in Support of Plaintiffs’ Opposition to Defendant’s Motion to Transfer Action from Shasta County to Fresno County.

Reclamation is also courting Westlands to become their cost-sharing partner for the Shasta Dam raise. See Exhibit H from the same Declaration: From: van Rijn, David <dvanrijn@usbr.gov> Date: Mon, Feb 12, 2018 at 8:05 AM Subject: Fwd: Shasta Raise - Agreement in Principle for Potential Cost Sharing to Russ Freeman at a Westlands Water District email address.

<https://www.friendsoftheriver.org/wp-content/uploads/2019/07/2019-0708-Robertson-RJN-Declaration.pdf>.

<sup>110</sup> [https://www.friendsoftheriver.org/wp-content/uploads/2019/11/Shasta\\_Snow-wreath\\_NtcRcpt\\_111219.pdf](https://www.friendsoftheriver.org/wp-content/uploads/2019/11/Shasta_Snow-wreath_NtcRcpt_111219.pdf)

<sup>111</sup> <https://www.friendsoftheriver.org/wp-content/uploads/2020/02/CA-FW-Shasta-Snow-Wreath-listing-may-be-warranted-Feb-2020-FG-Commission.pdf>

<sup>112</sup> [https://www.friendsoftheriver.org/wp-content/uploads/2020/06/Shasta-snow-wreath\\_notice-of-findings-candidacy-042120.pdf](https://www.friendsoftheriver.org/wp-content/uploads/2020/06/Shasta-snow-wreath_notice-of-findings-candidacy-042120.pdf)

<sup>113</sup> <https://www.friendsoftheriver.org/wp-content/uploads/2019/09/IF10626-CRS-analysis-of-FY-2019-20-WIIN-funding-requests.pdf>

<sup>114</sup> <https://www.friendsoftheriver.org/wp-content/uploads/2019/12/CA-dam-a-flashpoint-in-approps-talks-EE-News-12-12-2019.pdf>, <https://www.friendsoftheriver.org/wp-content/uploads/2019/12/Powerful-patrons-duel-Roll-Call-Dec-11-2019.pdf>

<sup>115</sup> The key provision of the “Further Consolidated Appropriations Act, 2020,” H.R. 1865, was the following

That in accordance with section 4007 of Public Law 114–322, and as recommended by the Secretary in a letter dated February 13, 2019, funding provided for such purpose in fiscal years 2017 and 2018 shall be made available to the Cle Elum Pool Raise, the Boise River Basin Feasibility Study, the Del Puerto Water District, the

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Los Vaqueros Reservoir Phase 2 Expansion Project, the North-of-the-Delta Off stream Storage (Sites Reservoir Project), and the Friant-Kern Canal Capacity Correction Resulting Subsidence.

See page 144 of <https://www.friendsoftheriver.org/wp-content/uploads/2020/01/BILLS-116hr1865enr.pdf>. The report language was not immediately accessible, but Rep. Harder provided a list of project funding amounts: <https://harder.house.gov/media/press-releases/harder-secures-14-million-central-valley-regional-water-projects-final-2020>.

<sup>116</sup> <https://www.friendsoftheriver.org/wp-content/uploads/2020/02/McCarthy-Announces-Funding-Mojave-Desert-News-Feb-4-2020.pdf>

<sup>117</sup> Here's the H.R. 1865 language where the Secretarial distribution appears to have come from the following provision: Additional Funding for Water and Related Resources Work — The agreement includes funds above the budget request for Water and Related Resources studies, projects, and activities. This funding is for additional work that either was not included in the budget request or was inadequately budgeted. Priority in allocating these funds should be given to advance and complete ongoing work, including preconstruction activities and where environmental compliance has been completed; improve water supply reliability; improve water deliveries; enhance national, regional, or local economic development; promote job growth; advance tribal and nontribal water settlement studies and activities; or address critical backlog maintenance and rehabilitation activities. Of the additional funding provided under the heading "Water Conservation and Delivery," \$134,000,000 shall be for water storage projects as authorized in section 4007 of the WUN Act (Public Law 114-322).

<https://www.friendsoftheriver.org/wp-content/uploads/2020/03/HR-1865-Division-C-EW-SOM-FY20.pdf> (see PDF page 63)

<sup>118</sup> California Water Forum in Tulare (Feb. 18, 2020), <https://kmp.com/news/local/water-forum-in-tulare?2-18> (minute 33:30-35:00).

2 California Water Forum in Tulare (Feb. 18, 2020), <https://kmp.com/news/local/water-forum-in-tulare?2-18> (minute 44:30-45:30).

3 California Water Forum in Tulare (Feb. 18, 2020), <https://kmp.com/news/local/water-forum-in-tulare?2-18> (minute 44:30-45:30).

<sup>119</sup> <https://www.friendsoftheriver.org/wp-content/uploads/2020/02/Trump-delivers-not-so-says-Newsom-Fresno-Bee-Nov-19-2020.pdf>

<sup>120</sup> <https://www.friendsoftheriver.org/wp-content/uploads/2020/02/Trump-February-2020-memo.docx>

<sup>121</sup> <https://www.friendsoftheriver.org/wp-content/uploads/2020/08/USBR-we-obey-tweet.png>

<https://twitter.com/usbr/status/1232804668952195073>

<sup>122</sup> <https://www.friendsoftheriver.org/wp-content/uploads/2020/03/Bureau-Letter-Shasta-Lake-Geologic-Testing-Scope-Project-WDID-No-5A45CR00557-ocr.pdf>

<sup>123</sup> <https://www.whitehouse.gov/presidential-actions/eo-accelerating-nations-economic-recovery-covid-19-emergency-expediting-infrastructure-investments-activities/>

<sup>124</sup> <https://www.friendsoftheriver.org/wp-content/uploads/2020/06/Chairwoman-Kaptur-Letter-WIIN-Storage-06-22-20.pdf>

<sup>125</sup> <https://www.friendsoftheriver.org/wp-content/uploads/2020/12/2020-12-3-Trumps-QAnon-of-water-projects-EE-News.pdf>. <https://www.msn.com/en-us/news/us/lame-duck-groups-bash-trump-administration-report-on-raising-the-height-of-shasta-dam/ar-BB1bmGz0>.

<sup>126</sup> <https://www.friendsoftheriver.org/wp-content/uploads/2021/01/2020-12-20-Trump-administration-advances-western-water-USBR.pdf>. Curiously, at this writing, the Reclamation website entry for this press release now bears a December 30, 2020 date. <https://www.usbr.gov/newsroom/newsrelease/detail.cfm?RecordID=73365>.

<sup>127</sup> <https://www.friendsoftheriver.org/wp-content/uploads/2020/12/BILLS-116HR133SA-RCP-116-68-Reclamation-provisions.pdf>. See section 208.

<sup>128</sup> These provisions of the WIIN can be reviewed here: <https://www.friendsoftheriver.org/wp-content/uploads/2020/12/PLAW-114publ322.pdf>. It is unclear to these writers from the implementation of the WIIN what funds are available to the Congressional appropriators and the Secretary of the Interior to spend. For example, is the Reclamation Water Storage Account only being funded by advanced payments of CVP capital debt, only by appropriations, or by both? Do Water Storage Account funds derived from advanced payments require Congressional appropriations for the Secretary to spend? Are direct appropriations independent of the Water Storage Account? What is the status of the Water Storage Account? What happens if the advanced payments are ruled to be premature by the courts? What is the rationale for Congressional appropriators to appropriate more funds than authorized by the WIIN? (For the latter numbers, see "Recent Funding, Project Allocations" [https://www.friendsoftheriver.org/wp-content/uploads/2021/02/crs\\_infocus\\_reclamation\\_section4007\\_28jan20217.pdf](https://www.friendsoftheriver.org/wp-content/uploads/2021/02/crs_infocus_reclamation_section4007_28jan20217.pdf). More questions could be raised.

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<sup>129</sup> “WIIN §4007(i) SUNSET.—This section shall apply only to federally owned storage project and State-led storage projects that the Secretary of the Interior determines to be feasible before January 1, 2021.” §4007 is the provision of the WIIN for which the Shasta Dam raise is proceeding under.

<sup>130</sup> Other projects in California received this Secretarial feasibility determination.

[https://www.friendsoftheriver.org/wp-content/uploads/2021/01/B\\_F\\_Sisk\\_FFR\\_Transmittal\\_Reclamation\\_12302020\\_Grijalva.pdf](https://www.friendsoftheriver.org/wp-content/uploads/2021/01/B_F_Sisk_FFR_Transmittal_Reclamation_12302020_Grijalva.pdf).

[https://www.friendsoftheriver.org/wp-content/uploads/2021/01/NODOS\\_FR\\_Transmittal\\_Letter\\_12222020\\_Grijalva.pdf](https://www.friendsoftheriver.org/wp-content/uploads/2021/01/NODOS_FR_Transmittal_Letter_12222020_Grijalva.pdf).

<https://www.friendsoftheriver.org/wp-content/uploads/2021/01/Kaptur-LVE-2-Feasibility-Transmittal-Letter.pdf>.

<sup>131</sup> [https://www.friendsoftheriver.org/wp-content/uploads/2021/02/crs\\_infocus\\_reclamation\\_section4007\\_28jan20217.pdf](https://www.friendsoftheriver.org/wp-content/uploads/2021/02/crs_infocus_reclamation_section4007_28jan20217.pdf).

<sup>132</sup> <https://www.friendsoftheriver.org/wp-content/uploads/2020/10/MP-15-122-Reclamation-Transmits-to-Congress-Final-Report-on-Proposed-Shasta-Dam-Raise.doc>

<sup>133</sup> <https://www.friendsoftheriver.org/wp-content/uploads/2021/02/fy2021-bor-budget-justification-TFD.pdf>.

(p. 413)

<sup>134</sup> <https://www.friendsoftheriver.org/wp-content/uploads/2020/08/USBR-Shasta-Dam-raise-dEIS-press-release-Aug-6-2020.pdf>. <https://www.friendsoftheriver.org/wp-content/uploads/2020/10/SLWRI-Draft-Supplemental-EIS.pdf>.

<sup>135</sup> [http://www.virtualpublicengagement.com/usbr\\_shasta/index.html](http://www.virtualpublicengagement.com/usbr_shasta/index.html).

<https://www.friendsoftheriver.org/wp-content/uploads/2020/10/SLWRI-Draft-SEIS-Virtual-Open-House.pdf>.

<sup>136</sup> <https://www.friendsoftheriver.org/wp-content/uploads/2020/10/SLWRI-Draft-SEIS-Virtual-Open-House.pdf>.

<sup>137</sup> The California Wild & Scenic Rivers Act forbids the construction of a reservoir upstream of the McCloud River bridge. (California Public Resources Code §5093.542 (b)).

<sup>138</sup> For a full discussion of Reclamation’s aberrant California Wild & Scenic Rivers analysis, see Comments of Friends of the River et al. on the SLWRI DSEIS, October 5, 2020, particularly in pages 25–50.

<https://www.friendsoftheriver.org/wp-content/uploads/2021/02/FOR-et-al-SLWRI-DSEIS-comments.pdf>.

<sup>139</sup> [https://www.friendsoftheriver.org/wp-content/uploads/2020/10/10-5-20\\_SWRCB-Comments-on-SLWRI-Draft-SEIS.pdf](https://www.friendsoftheriver.org/wp-content/uploads/2020/10/10-5-20_SWRCB-Comments-on-SLWRI-Draft-SEIS.pdf).

<sup>140</sup> [https://www.friendsoftheriver.org/wp-content/uploads/2020/10/Shasta\\_Dam\\_Raise\\_Supplemental\\_DEIS\\_ltr\\_FINAL.pdf](https://www.friendsoftheriver.org/wp-content/uploads/2020/10/Shasta_Dam_Raise_Supplemental_DEIS_ltr_FINAL.pdf).

<sup>141</sup> <https://www.friendsoftheriver.org/wp-content/uploads/2020/10/2020-10-05-FINAL-comment-letter-on-Shasta-Dam-SEIS-letterhead.pdf>.

<sup>142</sup> <https://www.friendsoftheriver.org/wp-content/uploads/2021/02/FOR-et-al-SLWRI-DSEIS-comments.pdf>.

<https://www.friendsoftheriver.org/wp-content/uploads/2020/10/NRDC-et-al-comments-on-Shasta-Dam-enlargement-DSEIS-10-5-20.pdf>.

<https://www.friendsoftheriver.org/wp-content/uploads/2020/10/2020-10-5-Center-for-Biological-Diversity-et-al-Comments-on-SLWRI-DSEIS.pdf>.

<sup>143</sup> <https://www.friendsoftheriver.org/wp-content/uploads/2020/10/NRDC-et-al-letter-re-feasibility-study-10-5-20.pdf>.

<sup>144</sup> <https://www.friendsoftheriver.org/wp-content/uploads/2020/10/FOR-Exhibit-03-PPT-on-Post-Raise-Seismic-Loads-Feb-2019.pdf>. <https://www.friendsoftheriver.org/wp-content/uploads/2020/10/FOR-Exhibit-04-PPT-on-seismic-schedule-March-2019.pdf>.

<sup>145</sup> <https://www.usbr.gov/newsroom/newsrelease/detail.cfm?RecordID=73146>.

<https://www.friendsoftheriver.org/wp-content/uploads/2021/01/2020-11-19-Trump-administration-finalizes-Shasta-Dam-raise-EIS-USBR.pdf>.

<sup>146</sup> [https://www.friendsoftheriver.org/wp-content/uploads/2020/12/SLWRI-Final-Supplemental-EIS\\_toEPA.pdf.pdf](https://www.friendsoftheriver.org/wp-content/uploads/2020/12/SLWRI-Final-Supplemental-EIS_toEPA.pdf.pdf).

<sup>147</sup> For a fuller discussion on why the WIIN’s provisions are broader than §8 of the Reclamation Act, see pages 27–30 of Comments of Friends of the River et al. on the SLWRI DSEIS, October 5, 2020. <https://www.friendsoftheriver.org/wp-content/uploads/2021/02/FOR-et-al-SLWRI-DSEIS-comments.pdf>.

<sup>148</sup> SLWRI FSEIS, Appendix G, p.1.3-2. [https://www.friendsoftheriver.org/wp-content/uploads/2020/12/SLWRI-Final-Supplemental-EIS\\_toEPA.pdf.pdf](https://www.friendsoftheriver.org/wp-content/uploads/2020/12/SLWRI-Final-Supplemental-EIS_toEPA.pdf.pdf).

<sup>149</sup> [https://www.friendsoftheriver.org/wp-content/uploads/2021/01/Reclamation\\_SLWRI\\_FSEIS\\_Transmittal\\_01122021\\_McClintock-ocr.pdf](https://www.friendsoftheriver.org/wp-content/uploads/2021/01/Reclamation_SLWRI_FSEIS_Transmittal_01122021_McClintock-ocr.pdf).

<sup>150</sup> [MER2021\\_FINAL\\_Report\\_ReducedSize-1-1.pdf](https://www.AmericanRivers.org/McCloudRiver2021) (americanrivers.org).

<sup>151</sup> [www.AmericanRivers.org/McCloudRiver2021](https://www.AmericanRivers.org/McCloudRiver2021).

<sup>152</sup> <https://www.friendsoftheriver.org/wp-content/uploads/2021/02/OR-et-al-SLWRI-DSEIS-comments.pdf>, p. 1.

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<sup>153</sup> <https://www.friendsoftheriver.org/wp-content/uploads/2021/05/NGO-Letter-re-Winnemem-Wintu-and-Shasta-Dam-Issues-5-18-21.pdf>. <https://www.friendsoftheriver.org/wp-content/uploads/2021/05/Shasta-Dam-and-the-Winnemem-Wintu-Tribe-3-15-21.pdf>.

<sup>154</sup> <https://www.friendsoftheriver.org/wp-content/uploads/2022/01/2021-BIB-IIJA-Title-IX.pdf>

<sup>155</sup> IIJA §40909. <https://www.friendsoftheriver.org/wp-content/uploads/2021/12/Title-IX-Western-Water-Infrastructure-2021-Water-Infrastructure-Investment-Jobs-Act.rtf>

<sup>156</sup> IIJA §40902(b) provides for that with the following language: (2) FEDERAL BENEFITS.—Before funding a project under this section, the Secretary shall determine that, in return for the Federal investment in the project, at least a proportionate share of the benefits are Federal benefits. (3) REIMBURSABILITY.—The reimbursability of Federal funding of projects under this section shall be in accordance with the reclamation laws.

The federal benefits associated with these federal projects may not support more than 50% funding, thus limiting federal project subsidies.

<sup>157</sup> Under IIJA §40902(a)(1)(A)(i) and §40902(a)(1)(A)(ii), §40902(1) feasibility studies are authorized for this project on the basis of prior study authorization (PL 96-375 §2). Under IIJA §40902(2)(A) (Congressional authorization required) and §40902(2)(B)(i) (Congressional failure to approve Secretarial construction recommendation) and the similar §40902(2)(C)(i), construction appropriations for the Shasta Dam raise are not authorized by the IIJA.

<sup>158</sup> <https://www.friendsoftheriver.org/wp-content/uploads/2022/01/2021-BIB-IIJA-Title-IX-sec-40901.pdf>

<sup>159</sup> <https://valadao.house.gov/news/documentsingle.aspx?DocumentID=495>

<sup>160</sup> <https://www.congress.gov/bill/118th-congress/house-bill/215>

<sup>161</sup> (a) STORAGE.—Section 4007 of the Water Infrastructure Improvements for The Nation Act (Public Law 6 114–322) is amended—(1) in subsection (b)(1), by striking “or any public agency organized pursuant to State law” and inserting “any public agency organized pursuant to State law, or any stakeholder”; and (2) in subsection (i), by striking “January 1, 2021” and inserting “January 1, 2028”. (WATER for California §304(a)(2))

<sup>162</sup> DURATION.—Section 4013 of the Water Infrastructure Improvements for The Nation Act (Public Law 15 114–322) is amended—(1) in paragraph (1), by striking “and”; (2) by redesignating paragraph (2) as paragraph (3); and (3) by inserting after paragraph (1) the following: “(2) section 4007, which (except as provided in paragraph (3), shall expire on December 31, 2028; and”. (WATER for California §304(b))

<sup>163</sup> STORAGE.—Section 4007 of the Water Infrastructure Improvements for The Nation Act (Public Law 6 114–322) is amended— in subsection (i), by striking “January 1,2021” and inserting “January 1, 2028”. (WATER for California §304(a)(1))

<sup>164</sup> FUNDING.—In accordance with section 4007 of the Water Infrastructure Improvements for the Nation Act (Public Law 114–322), and as recommended by the Secretary in letters dated February 13, 2019; June 22, 2020; and December 3, 2020; funds made available in the Water and Related Resources account for the Bureau Reclamation in Acts of appropriation for fiscal years 2017, 2018, 2019, 2020, and 2021 shall be made available to the Shasta Dam and Reservoir Enlargement Project. (WATER for California §305(a))

<sup>165</sup> Section 40902(a)(2) of the Infrastructure Investment and Jobs Act (Public Law 117–58) is amended—(1) in subparagraph (B)—(A) in the matter preceding clause (i), by striking “this Act, except for any project for which—” and inserting “this Act; or”; and (B) by striking clauses (i) and (ii); and (2) in subparagraph (C), by striking “(except that projects described in clauses (i) and (ii) of subparagraph (B) shall not be eligible)”. (WATER for California §301)

<sup>166</sup> CLARIFICATION.—No provision of State law shall preclude or otherwise prevent any public water agency, including a public agency of the State, that contracts for the delivery of CVP water from assisting or cooperating with, whether by loan, grant, license, or otherwise, the planning and construction of any project undertaken by the Bureau of Reclamation to enlarge Shasta Dam. (WATER for California §305(b)) (See CA Public Resources Code § 5093.542(c).)

<sup>167</sup> [https://www.friendsoftheriver.org/wp-content/uploads/2023/06/Opposition-Letter-to-H.R.-215\\_042423.pdf](https://www.friendsoftheriver.org/wp-content/uploads/2023/06/Opposition-Letter-to-H.R.-215_042423.pdf)

<sup>168</sup> <https://www.congress.gov/bill/118th-congress/house-bill/215/all-actions>

<sup>169</sup> <https://www.congress.gov/bill/118th-congress/house-bill/3675/actions>

<sup>170</sup> <https://boebert.house.gov/media/press-releases/boebert-western-water-accelerated-revenue-repayment-act-gets-hearing>

<sup>171</sup> <https://docs.house.gov/meetings/AP/AP10/20230615/116119/BILLS-118--AP--EnergyWater-FY24EnergyWaterSubcommitteeMark.pdf>. See page 64, Title V “Water for California” Sec. 501.

<sup>172</sup> <https://www.friendsoftheriver.org/wp-content/uploads/2023/11/2023-10-26-Section-531-House-Energy-Water-Approps-bill.docx>

<sup>173</sup> §535 of the House Energy & Water Appropriations bill (H.R. 4943) seeks to preempt California Public Resources Code §5093.542(c). <https://www.friendsoftheriver.org/wp-content/uploads/2023/11/2023-10-26-Section-535-House-Energy-Water-Approps-bill.docx>



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<sup>174</sup> <https://www.whitehouse.gov/wp-content/uploads/2023/10/H.R.-4394-Energy-and-Water-Development-and-Related-Agencies-Appropriations-Act-2024.pdf>

<sup>175</sup> <https://www.friendsoftheriver.org/wp-content/uploads/2023/11/2023-10-3-Energy-Water-Approps-SAP-veto-excerpt.docx>

<sup>176</sup> <https://valadao.house.gov/news/documentsingle.aspx?DocumentID=908>