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Re: Comments of Friends of the River; Friends of Del Puerto Canyon; Save Mount Diablo Association; Center for Biological Diversity, and the Mother Lode Chapter of the Sierra Club
Del Puerto Canyon Reservoir Project
Draft Environmental Impact Statement (DEIS)

These comments on the "Del Puerto Canyon Reservoir Project Draft Environmental Impact Statement California Great-Basin" (DEIS) of the California Great-Basin Region of the United States Bureau of Reclamation (Reclamation) are submitted by Friends of the River (FOR). Save Del Puerto Canyon, Save Mt Diablo Association, Center for Biological Diversity, and the Mother Lode Chapter of the Sierra Club. FOR, Save Del Puerto Canyon, and the Sierra Club previously submitted comments with a number of local and regional conservation, water, and recreational non-profits on the Notice of Intent to produce this DEIS on May 29, 2020 (May 2020 Comments).[1] The current set of comments incorporates and builds on the May 2020 comments. Thank you for the opportunity to provide these comments.

Reclamation is in a unique position to analyze the economic, systemic, and environmental impacts through this DEIS. This is because it is in a different vantage point than the project sponsor and California Environmental Quality Act (CEQA) agency lead — the Del Puerto Water District (District or DPWD) and the San Joaquin River Exchange Contractors Water Authority (Authority, SJRECWA, or Exchange contractors). Not only is Reclamation a separate entity, it stands in the position of having to make the monetary decision of

[1] Friends of the River, Comments on April 29, 2020 Notice of Intent to Prepare an Environmental Impact Statement for the Del Puerto Reservoir Canyon Project, May 29, 2020, signed by Sierra Club Motherlode Chapter, Save Del Puerto Canyon, Central Sierra Audubon Society, California Native Plant Society, Storage Response Group, California Save Our Streams Council, California Sportfishing Protection Alliance, California Water Impact Network, California Water Research, The Fly Fishers of Davis, North Coast Rivers Alliance, Northern California Council of Fly Fishers International, Sacramento River Council (now part of Sacramento River Preservation Trust), Save California Salmon, and Southern California Watershed Alliance.

whether or not to help fund the project — a position which certainly requires enhanced consideration of the financial and technical feasibility of the project, as well as public safety impacts. A substantial portion of these comments focuses on these considerations, which overlaps with many of the initial points we recommended Reclamation to consider in our May 2020 comments, and refocus on throughout our comments below:

- "The EIS must provide a clear purpose and need statement.
- The EIS must clearly describe and evaluate proposed federal benefits
- The EIS must have a detailed, accurate, and stable description of project operations
- The EIS must evaluate the cumulative impacts of all proposed storage projects on CVP operations
- The EIS must consider the direct and indirect impacts of the Proposed Action on:
  - Aesthetics
  - Biological Resources
  - Economic/Social
  - Public Safety
  - Cultural / Historical
  - Traffic / Transportation
- The EIS must include a range of reasonable alternatives to the proposed action and identify the least environmentally damaging practicable alternative.
- The EIS must identify reasonable mitigation measures."

## I. BACKGROUND

The proposed reservoir in Del Puerto Canyon threatens to periodically inundate and denude approximately 5 miles of Del Puerto Creek and its surrounding landscape in the Diablo Range in California Coast Ranges. Among its impacts, the Project will block natural gravel transport from these mountains that, if unsuccessfully mitigated, will eventually impact noteworthy downstream fisheries. Also, it is likely to impact other users of Central Valley Project (CVP) water. Lastly, the Project is speculative because of costs and requirements for changes in CVP water rights. According to press accounts, the estimated cost of the proposed 82,000-acre-foot reservoir has risen to $1.12 billion dollars.

The Project sponsors (Sponsors) are the Del Puerto Water District (District or DPWD) and the San Joaquin River Exchange Contractors Water Authority (Authority, SJRECWA, or Exchange contractors). They propose to divert to storage portions of their CVP water service/repayment and exchange contract deliveries that are presumably surplus to their immediate needs for later use or annual complete fill-and-release operations. The California Great-Basin Region of the United States Bureau of Reclamation (Reclamation) also proposes to use stored deliveries for nearby wildlife refuges. The DEIS has limited description of a Delta-Mendota Canal subsidence-capacity-limitation water-supply augmentation operation perhaps under the control of Reclamation and reimbursable under traditional Reclamation law.

The DEIS is being prepared to support the described proposed federal actions:

> For DPWD and SJRECWA to construct and as authorized operate the proposed Project, Reclamation would need to complete several actions, including entering into a Partnership Agreement for the Project pursuant to the WIIN Act, adding a point of rediversion to storage to Reclamation's water rights, preparing and executing, as appropriate, any necessary agreements with DPWD and the SJRECWA for a new diversion point off of the DMC, management of refuge water, and approving use authorizations related to construction of a Diversion/Outfall facility and modifications to the DMC pursuant to 43 CFR 429- Use of Bureau of Reclamation Land, Facilities, and Waterbodies. In addition, Reclamation may provide an investment in the Project consistent with the authorities provided under the WIIN Act.[2]

(The WIIN Act is the Water Infrastructure Improvements for the Nation Act of 2016. The WIIN Act expired on December 16, 2021, although some key elements contained project grandfathering provisions[3] for which the Del Puerto Canyon dam is believed to qualify.)

## II. THE EIS MUST PROVIDE A CLEAR PURPOSE AND NEED STATEMENT

NEPA requires federal agencies to articulate the "purpose and need" for a proposed action for which environmental review is required. (40 CFR Sec.1502.13). The articulation of a purpose and need statement is critical because only a sufficiently broad statement will allow full development of an adequate range of alternatives to enable the EIS to provide "a clear basis for choice among options by the decision-maker and the public.1 The EIS must analyze the options in order to determine the significance of their impacts 2 and the "least environmentally damaging practicable alternative (LEDPA) which would achieve the purpose of the Proposed Action.[4]

The DEIS describes the purpose of the Project:

> The purpose of the proposed Project is to develop additional South of Delta water storage to maximize the management and efficient use of existing water supplies in both DPWD and the SJRECWA service areas in a manner that is consistent with WIIN Act requirements and Reclamation law, as well as environmental purposes, including water supply for wildlife refuges designated under the Central Valley Project Improvement Act, and flood damage reduction.[5]

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[2] *Del Puerto Canyon Reservoir Project, DEIS*, Bureau of Reclamation, Department of the Interior, December 2025, (ES-3, Proposed Federal Actions), p. ES-2.
[3] WIIN §4007(i) sunset clause.
[4] City of Carmel-by-the-Sea v. United Dep't of Transp., 123 F.3d 1142, 1155 (9th Cir. 1997).
[5] DEIS, p. I-5.

It is, of course, impossible not to note that the purpose of the Project (here, the Project preferred[6] alternative, alternative 2 and Alternatives 4 and 5) includes new south-of-Delta water storage for use in the District and SJRECWA service areas, as well as refuge water supplies. This makes any project or program outside of the two dam sites evaluated inconsistent with the project purpose. Thus, the project purpose shapes the DEIS analysis and selection or rejection of alternatives.

The DEIS also describes the need for the project:

> The need for the Project is driven by persistent water supply challenges within the DPWD service area. This area is frequently allocated less than the full contracted CVP water amount which results in reduced agricultural activity, economic hardship for end water users, and increased reliance on groundwater pumping. These shortages routinely occur during dry and critically dry years, with an average annual total water shortfall of 86 TAF (Table 1.1-1) for both Project Sponsors combined. A broader, regional need exists for additional water storage to support the South of Delta Drought Plan, supported by the DPWD and SJECWA. Additionally, subsidence reduces the capacity of the DMC to convey water supply deliveries to contractors dependent on that supply. Increasing water storage capacity could alleviate some of the conveyance constraints caused by subsidence. The Project supports the need to diversify Level 2 refuge water sources in order to minimize possible adverse effects upon CVP contractors and further make available Incremental Level 4 refuge water to CVPIA refuges.

However, some additional context should have been provided in the DEIS explaining the reasons for the variable nature of CVP deliveries to the District:

Reclamation manages its variable and sometimes intermittent supply by contractual reduction in delivery obligations to its settlement and exchange contractors and its Shortage Policy provisions with other types of CVP contractors. Settlement and exchange contractual supply shortage provisions are generous to these largely agricultural contractors: a minority (usually municipal and industrial [M&I]) have no shortage provisions, with the majority (largely agricultural) only up 25%. These provisions have been completely or largely honored except in extreme droughts. These contractors have the most reliable supplies in the CVP. CVP water service/repayment[7] agricultural and M&I

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[6] The DEIS is inconsistent in describing whether the Project Alternative 2 is the "Project Sponsor's Locally Preferred Project" (for example, DEIS, p. 2-1) or the preferred alternative (DEIS, p ES-4). Typically, the National Economic Development (NED) project is the federally preferred project. They could be the same, but if the NED project is less expensive, the local sponsors would have to be responsible for the incremental increased costs of the locally preferred project if that project is selected instead of the NED project. We did not find an NED analysis in our review.

[7] Water service contractors that have repaid their share of CVP facilities capital debt have their contracts converted to water repayment contracts. Their CVP repayment costs are largely limited to the operation and maintenance of the CVP. Repayment contracts are permanent, their face value are not subject to reduction,

contractors and refuges have drought deliveries that are managed by Reclamation's Shortage Policy. M&I and refuge Shortage Policy maximum reductions are limited to 25%, although droughts in recent years have sometimes resulted in either projected or actual shortages greater than 25%. In other words, contracts and Shortage Policy delivery expectations are occasionally, to a lesser or greater degree, affected mostly by *force majeure* conditions for the CVP, whether it is called an Act of God or natural climate extremes. Fortunately, for the CVP system, agricultural water service/repayment contractors can be shorted up to their full contract amounts when overall supplies or geographic realities constrain overall system deliveries. The reduced reliability for these contractors allows the CVP to make more reliable deliveries to higher priority contractors.

The majority of water service/repayment contractors that are connected to the larger CVP system, like the District, are on the west side of the San Joaquin Valley. They are also, perhaps not coincidentally, the last major water service/repayment contractors to be provided CVP service.

Of course, there are occasionally other types of special contractors that may have special shortage provisions in their CVP contracts. It should be noted that Reclamation operates its system subject to state water rights. State water rights have their own wrinkles and complexities, but to simplify, the date of the application for the rights establishes the priority for access to the state's waters. Reclamation's priority is in the middle of the pack, verging on being a latecomer, and the state's Area of Origin statutory provisions can in theory (although seldom if at all in practice) allow junior rights holders to jump above the CVP priority. This means that Reclamation's direct diversions, diversions to storage, and Delta transfers can sometimes be curtailed for priority reasons or other reasons by the State Water Resources Control Board, especially during state-declared drought emergencies.

Simply summarized, the priority of access to CVP supplies within the CVP depends first on contract provisions and next on the type of CVP contract under Reclamation's Shortage Policy. Geography, and the consequent practical realities of making deliveries, also plays a role. For example, north-of-Delta contractors may have delivery reliability greater than similar south-of-Delta contractors. In addition, Reclamation's significant Friant Unit is largely separate from the rest of the CVP and has its own contract provisions, so the allocation of shortages there is somewhat different from other CVP units.

No doubt the Sponsors and, apparently Reclamation, see water supply management benefits in additional water storage south of the Delta. The real question, of course, is whether the benefits outweigh the costs, monetary and otherwise. Press accounts in 2017,

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and are free from acreage restrictions. They remain subject to Shortage Policy or *force majeure* delivery restrictions. CVP water service contractors have all converted their contracts to repayment contracts, although not without court challenges.

quoting Anthea Hansen, the general manager of the District, pegged the cost at $400—500 million.[8] Press accounts in December 2025 pegged the cost at $1.2 billion.[9]

These kinds of costs and cost escalations bear on the financeability of and willingness to invest in the project. Reclamation's WIIN Act feasibility determination was prepared before the estimated costs of the project passed over the billion-dollar amount. Thus, not all such determinations are equal. Perhaps not surprisingly, Reclamation's positive feasibility determinations have not always found winning projects, and could be combined with other considerations to do so and achieve more realistic results consistent with real-world results. According to Reclamation, pre-WIIN Act feasibility determinations contain four parts:

> • Technical feasibility, consisting of engineering, operations, and constructability analyses verifying that it is physically and technically possible to construct, operate, and maintain the project.
> • Environmental feasibility, consisting of analyses verifying that constructing or operating the project will not result in unacceptable environmental consequences.
> • Economic feasibility, consisting of analyses verifying that constructing and operating the project would result in net NED benefits.
> • Financial feasibility, consisting of examining and evaluating project beneficiaries' ability to repay their allocated portion of the Federal investment in the project over a period of time, consistent with applicable law.[10]

The District received a WIIN Act Secretarial Feasibility Determination shortly before the WIIN §4007(i) statutory deadline, January 1, 2021, before the recent cost escalations but grandfathering its WIIN Act eligibility. WIIN §4007(c)(2) establishes conditions for the Secretarial Feasibility Determination:

(i) the State-led storage project is technically and financially feasible and provides a Federal benefit in accordance with the reclamation laws;
(ii) sufficient non-Federal funding is available to complete the State-led storage project;
(iii) and the State-led storage project sponsors are financially solvent;

Note that WIIN §4007(c)(2)(B)(i) feasibility determinations do not include environmental or economic feasibility in a WIIN Act feasibility review, although WIIN §4007(c)(2)(B)(iii) requires non-federal project sponsors to be solvent. Note that Reclamation's financial feasibility review is focused on the sponsor's often theoretical "ability to pay" its share of the project, which is not the same as "willingness to pay."

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[8] https://www.modbee.com/news/local/article236749748.html.
[9] https://www.modbee.com/news/local/article313818020.html.
[10] Chapters 6 & 8, *Shasta Lake Water Resources Investigation final Feasibility Report*, U.S. Bureau of Reclamation, 2015.

Some examples of feasibility reviews that did not reflect or ultimately predict real-world results include: (1) Reclamation finding the north-of-delta Shasta Dam raise to be feasible,[11] in spite of determining that the project was in conflict with the California Wild & Scenic Rivers Act,[12] which later proved to be a predictable impediment for California water districts.[13] (2) Reclamation in its 2015 Draft Feasibility Report reported favorably on the feasibility of its proposed south-of-delta Temperance Flat dam.[14] However, when the project failed to win any substantial 2014 California Water Bond funding allocations and non-federal sponsor funding commitments, the project was quietly placed in deferral status.[15] In both cases, Reclamation dangled potential partnerships among both agricultural and municipal and industrial (M&I) users, including potential purchasers from the State Water Project outside of the CVP. Yet, in neither's case could those arrangements be made.

Recently, even pure south-of-delta M&I purveyors have been unable to finance additional storage projects:

- Contra Costa Water District's proposed Los Vaqueros Reservoir expansion to accommodate more of this district's CVP water, even with nearly half a billion in California Water Bond of 2014 Chapter 8 subsidies, could not find financial partners and be financed. Like the Del Puerto Canyon dam proposal, Contra Costa's project had suffered a cost escalation (a comparatively modest $915 million[16] to $1.5 billion increase).[17]

- The Santa Clara Valley Water District's proposed new Pacheco dam, which would have used CVP and SWP water, was also recently dropped. The costs had escalated from $918 million to capital costs of $3.2 billion, which although arguably was within Santa Clara's ability to pay, exceeded its *willingness* to pay. Perhaps a foreshadowing of the DEIS Project, another reason for the cancellation, at least

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[11] https://www.friendsoftheriver.org/wp-content/uploads/2021/02/crs_infocus_reclamation_section4007_28jan20217.pdf. p. 2.
[12] *Shasta Lake Water Resources Investigation (SLWRI) Final Feasibility Report*, U.S. Department of the Interior, U.S. Bureau of Reclamation, Mid-Pacific Region, July 2015, p. 25-40.
[13] https://mavensnotebook.com/2019/09/30/this-just-in-westlands-announces-termination-of-shasta-dam-raise-ceqa-analysis/.
[14] *Upper San Joaquin River Basin Storage Investigation Draft Feasibility Report*, January 2014, U.S. Department of the Interior, Bureau of Reclamation, Mid-Pacific Region.
[15] https://sjvwater.org/temperance-flat-dam-on-indefinite-hold-after-report-shows-it-doesnt-pencil-out-for-water-users/.
[16] https://www.mantecabulletin.com/news/local-news/plans-call-for-raising-los-vaqueros-reservoir-north-of-livermores-dam-height-by-55-feet/.
[17] https://www.mercurynews.com/2025/01/15/we-shouldnt-have-been-blindsided-state-officials-disappointed-over-collapse-of-1-5-billion-plan-to-expand-los-vaqueros-reservoir/. https://www.mercurynews.com/2024/09/23/1-5-billion-project-to-expand-major-bay-area-reservoir-collapses/.

> according to Santa Clara, was in part because of Reclamation's role in the need to acquire changes to Reclamation's water rights permits for Santa Clara's proposed dam.[18]

NEPA requires agencies to:

> "study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources. This requirement" … "seeks to ensure that each agency decision maker has before him and takes into proper account all possible approaches to a particular project … which would alter the environmental impact and cost-benefit balance." (42 USC Sec 4332(2) (D)).

The EIS must include those reasonable alternatives that "are practical or feasible from the technical and economic standpoint and use common sense, rather than simply desirable from the standpoint of the applicant."35 In order to make a reasoned choice among alternatives and ascertain which is the LEDPA, the EIS must analyze a range of alternatives.

M&I users have clout. Their ability and willingness to pay is substantially more than agricultural districts that only or at least primarily serve agricultural uses. Yet the DEIS consistently confines the project description of the Project as increasing the reliability of nearby agricultural and refuge supplies. It does not openly contemplate M&I deliveries. Here are some representative statements from the DEIS:

> [T]he Project would benefit agricultural areas in the Project Sponsors' service areas, which include parts of San Joaquin, Stanislaus, Merced, Madera, and Fresno counties.[19]

> Although the Action Alternatives would result in a permanent loss of important farmland compared to the No Action, agriculture would remain the predominant land use in the area surrounding the proposed Project. The Action Alternatives would not induce residential, commercial, or industrial development in the surrounding area and would not cause conversion of adjacent sites to nonagricultural uses. Construction and operation of the proposed Project is also considered a compatible use for agricultural land in the county zoning code. The Project would benefit agricultural lands in Stanislaus County and elsewhere by improving water supply reliability which would reduce the potential for land conversion throughout the Project Sponsors' service areas. Therefore, the proposed Project would overall provide a benefit to agriculture compared to the No Action.[20]

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[18] https://www.fresnobee.com/opinion/opn-columns-blogs/marek-warszawski/article291957225.html.
[19] DEIS, p. 3.2-1.
[20] DEIS, ES-5.

Given recent experience with other reservoir proposals,[21] all of which have experienced cost escalation and were marketing to *M&I* users, the *actual* feasibility of the Project and beneficiaries, as described in the Feasibility Report submitted to the California Water Commission in 2020 and implied in the DEIS, seems unlikely. If the Project sponsors choose to market directly or indirectly to M&I users, the DEIS conclusions that "[t]he Action Alternatives would not induce residential, commercial, or industrial development in the surrounding area and would not cause conversion of adjacent sites to nonagricultural uses" would result in the question: which M&I user might be favored with such water sales or receive indirect benefits?

## III. THE EIS MUST CLEARLY DESCRIBE AND EVALUATE PROPOSED FEDERAL BENEFITS

The EIS must clearly define, limit, describe, and evaluate proposed federal benefits of the project, including benefits for wildlife refuges. Presumably, traditional reimbursable benefits such as pumping additional water and benefits from increased drought reliability are not eligible for WIIN state-led project funding.

Importantly, water supply is not a federal benefit purpose. Water service to wildlife refuges is a federal benefit, explaining why Alternative 3, an 82,000-acre-foot reservoir "without investment from Reclamation" means that "federal benefits would not be available."[22] This leaves project costs allocated to water supply, including water storage, for the project sponsors, the undiscussed beneficiaries of Project recoverable Delta-Canal water capacity lost to subsidence, and the other undescribed beneficiaries for which 11,000 acre-feet of storage is reserved in the DEIS.

WIIN §4007(c)(4)(A) allows the Secretary to rely on feasibility reports prepared by the sponsor of the project. The District's feasibility report was completed by Woodward and Curran in 2020. It is unknown what reliance the Secretary placed on the District's 2020 report.

It is not clear if and how much the Secretarial Feasibility Determination was based on a project for a largely agricultural water service provider and a more water-rich Exchange contractor. It is also not clear if the Feasibility Determination ability-to-pay analysis relied on the possibility the District and the Authority could depart the EIR and this DEIS's project description and adopt a more profitable business model. In this ability-to-pay scenario, instead of marketing to the local agricultural market, the partners might seek to market

[21] The CVP's failure to seek an expanded point of diversion in the State Water Resources Control Board's tunnel (Delta Conveyance Project) proceeding is another example of a large group of agricultural contractors' with reluctance to assume large cost obligations

[22] DEIS, p. ES-3.

their CVP water to CVP/SWP urban users in the south bay[23] or even at the more distant markets in the SWP-dominated south state served by the California Aqueduct.

There are, of course, some institutional and geographic constraints to such sales, but having a reservoir owned by the District with available space allocated to the Authority, which has large amounts of reliable supplies that it could park in a reservoir and market, might turn an already federally subsidized project with doubtful financial feasibility into a profitable venture. If so, the project description is seriously anemic to the point of being flawed.

## IV. NEED AND FITNESS TO MATCH DESIRED NEED

The "need" for this project is most cogently said to arise from the observation that Reclamation routinely fails to deliver full contract deliveries to south-of-delta agricultural water service/repayment contractors. This, of course, is true. After all, such contractors by category and geography have the lowest priority for deliveries within the CVP, and CVP water rights, while large, don't routinely have the highest priority among other water rights holders in the state. Indeed, CVP acknowledged dependence on *surplus* north state water is by design. The framers of the CVP assumed that only waters in CVP watersheds *surplus* to the needs of the source watersheds would be collected by the CVP for delivery to the arid westside lands in the rain shadow of the California Coast Ranges.

Indeed, in recognition of these circumstances, CVP water service/repayment contract deliveries were *intended to be a supplemental supply* to these contractors. Such contractors were expected to also rely on previous water management practices and supply alternatives and, if necessary, fallow crops, select more appropriate crops or cropping seasons, tap groundwater, arrange for other supply alternatives, and a mix of these strategies during drier years when the CVP supply would only be available to contractors with higher priority and often more fortunate geography.[24] 100% deliveries were expected to be rare, just have they have been for the District. Expansions in water service/repayment contractor use as a result of the supplemental supply have

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[23] The Del Puerto Water District, at least some or all of the Exchange contractors, and the Santa Clara Valley Water District are members of the San Luis and Delta-Mendota Canal Authority. They are not strangers to one another.

[24] The expected lack of reliance on full contract deliveries is confirmed by the DEIS at page 1-1: "Due to natural conditions in California, the amount of water available for CVP users south of the Sacramento-San Joaquin Delta (Delta) can be extremely variable year-to-year. Water supplies are moved through the Trinity, Sacramento and American River basins and through the Delta in accordance with Central Valley Project permits and agreements. Regulatory restrictions require maintenance of Delta outflows. The resulting fluctuation in available water supply often results in less than 100 percent allocations to CVP Delta and south-of-Delta contractors. For this reason, most south-of-Delta CVP contractors have other water supplies to supplement their CVP contracts and the CVP is not considered to fully meet water needs south of Delta in any year. Shortages in water can result in land fallowing, crop damage and crop loss, increased groundwater pumping and associated land subsidence, and economic hardship for the region."

nevertheless been common and come with some peril of failing the sustainability of the use expansions and requiring management actions to recover sustainability.

Nevertheless, the DEIS "no action" alternatives fail to describe this richer palette of choices available and necessary to a water service/repayment contractor receiving supplemental water from the CVP. Instead, for example, the DEIS concludes that conservation efforts, while continuing, "would not yield an increase in water supply reliability."[25] This conclusion is apparently based on the assumption that conservation efforts would not increase CVP surface water delivery reliability based on new storage. Setting aside the relationship between increased storage and potential yield, this DEIS statement, of course, is not true since reduced CVP demand should result in more surface water available to individual CVP contractors.

More importantly, as noted earlier, there is a structural flaw in the DEIS. One of the project's purposes is to increase water storage — and by implication, increase water availability. If water supply reliability is also meant to encompass groundwater availability, any actions, including water conservation, that result (all other things held equal) in less groundwater pumping necessarily result in more available groundwater availability. This has always been a key strategy for CVP water service/repayment contractors to maintain or increase district water supply reliability and thus benefit from their supplemental intermittent water supplies from the CVP.

Instead, the DEIS confounds: "In addition, conservation alone cannot meet the Project purpose of providing water supply reliability in dry years or to provide water storage south of Delta. In 2014 and 2015, and again in 2021 and 2022, the CVP allocation was 0 AF. In such years, water conservation efforts would not provide the water supply reliability that would be afforded by water storage south of the Delta." This fails to hit the complete analysis mark of the natural workings of the hydrology. Demand management resulting in *in-lieu* or direct contributions to groundwater within and nearby the District prior to dry years and even within dry years can improve or stabilize groundwater conditions and therefore improve water supply reliability in dry years.[26]

Efforts to bring in additional surface water are, of course, popular within the District. But what can this billion-dollar-plus Project accomplish? As will be discussed, it would appear that the small Project storage allocations are unlikely to have water in them during drought years, especially for CVP water service/repayment contractors that commonly would not have been able to make "deposits" or sufficient "deposits" in their storage account even in most "better" times.

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[25] DEIS, p. ES-3.

[26] Some of the District's failure to excel in some aspects of demand management are self-inflicted, arising in crop selection that constrains more readily feasible drought fallowing options when annual crops occupy a greater portion of the District crop mix: "For example, over the years from 2001 to 2013, growers in the DPWD service area increased acreage planted to higher value permanent crops, such as almonds." DEIS, p. 3.14-3.

## V. THE EIS MUST HAVE A DETAILED, ACCURATE, AND STABLE DESCRIPTION OF PROJECT OPERATIONS

The EIS must have a detailed, accurate and stable description of project operations, including a clear description of sources of water to fill the reservoir, as well as detailed and accurate modeling of Central Valley Project operations with the proposed reservoir. The following considers conflicting information in different environmental documents prepared by the Project partners on sources of water to fill the reservoir, as well as obsolete modeling of Central Valley Project operations in the Draft EIR.

In contrast, the DEIS is pretty clear that "Reclamation's Project purpose is to provide surface water storage to improve agricultural and M&I water supply reliability within the DPWD and SJRECWA service areas." (emphasis added)[27] Other supply approaches, such as those dealing with groundwater, that could meet the similar and broader goal of reliability thus fail the purpose test of the DEIS and are not seriously examined.

It cannot escape notice that, although there has been mission creep over the years, both Reclamation and the District are mostly in the surface water supply business. That can have consequences. "If the only tool you have is a hammer, you treat everything as if it were a nail." However, given the price tag of the dam (hammer), other tools will be necessary for the District and its members, just as they have been necessary since the formation of the District.

Reclamation and the Project partners have apparently reached an agreement that these reasonably foreseeable CVP water service/repayment contractor activities can receive credit for and some control over CVP diversions to storage. This appears to be the basis of the DEIS assertion that "[t]here would be no increase in diversions from the Delta by Reclamation or DWR, because water is made available by Project partners through conservation measures."[28] Apparently, Reclamation is crediting water conservation work by its San Joaquin Valley contractors with storage credits in San Luis or the aspiring Del Puerto Dam Reservoirs.[29] Thus, instead of water conservation reducing CVP contractor demand and consequent reduced pressure for Delta diversions, this arrangement provides for a conclusion that new increased diversions to storage do not result in new increased diversions from the Delta. It's a clever trick, but in the end, new CVP contract diversions to storage result in more water service/repayment contractor demand being met by surface water diversions than by previous or other expected means.

Curiously, the DEIS states: "Reclamation has identified Alternative 2 (DPCR 82 TAF) as the preferred alternative based on several factors evaluated in the engineering and economic

[27] DEIS, p. 2-20
[28] DEIS, p. 3.10-15.
[29] See DEIS footnote on p. 3.10-118.

study and this Draft EIS. Alternative 2 provides the needed amount of surface water storage and thus supplies more water for agriculture and wildlife refuges than other alternatives" (emphasis added).[30]

The DEIS does not provide any information on how the "needed amount of surface storage" was determined. The DEIS does provide 2001—2024 CVP allocations in relation to contract amounts. As expected, Exchange contractor deliveries are large and highly reliable; agricultural water service/repayment contractor deliveries to the District are more variable and intermittent. The average annual combined "shortfall" is described as 86,000 acre-feet.[31]

The District has an agricultural water service/repayment contract of 140,210 acre-feet. The Authority has an exchange contract for 840,000 acre-feet, reduced to 650,000 acre-feet in critically dry years.[32] That's contracts for 980,210 and occasionally 790,210 acre-feet. When combined, these contracts have experienced an 8.1% and occasionally a 10.9% contract-to-delivery "shortfall." Combined delivery shortfalls have ranged from 0 to 317,000 acre-feet, the latter, not surprisingly, on the third consecutive critically dry water year.[33]

The District is already in the process of mitigating its "shortfall" by bringing on a new water supply. The North Valley Regional Recycled Water Program (NVRRWP) takes treated sewage from Turlock and Modesto via a trans-Valley pipeline that discharges into the Delta-Mendota Canal.[34] The NVRRWP adds a 30,600 acre-feet per year base supply with 80% going to the District and remaining 20% dedicated to wildlife refuges. As Turlock's and Modesto's sewage outflows grow, the NVRRWP is expected to deliver 59,000 acre-feet per year, joining groundwater pumping, crop selection, irrigation efficiency, and fallowing to help manage agricultural production with variable CVP supplemental supplies inherent in the District's CVP water service contract.

The question, therefore, arises how can Alternative 2, the preferred alternative, provide the "needed amount of surface storage" and how was this "need" was determined. The DEIS provides some curious estimates of its locally preferred project annual "yield." It starts with: 49,600 acre-feet of agricultural supply (ranging from 54,000 acre-feet to 41,000 acre-feet) and 1,000 acre-feet of M&I supply to the City of Patterson (ranging from 1,700 acre-feet to 200 acre-feet). It does not distinguish where or who would benefit from the agricultural deliveries.[35]

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[30] DEIS, p. 2-21.
[31] DEIS, p. 1-2, table 1.1-1.
[32] DEIS, p. 1-1.
[33] Ibid.
[34] https://sldmwa.org/new-5-14-18-statement-del-puerto-water-district-receives-prestigious-water-award-excellence/.
https://www.cityofturlock.org/_pdf/files/NorthValleyRegionalRecycledWaterProgramFacilitiesPlanFinalReport.pdf.
[35] DEIS. p. 3.10-17, tables 3.10-3 and 3.10-4.

It further provides estimates of annual water yields from better management of subsidence capacity constraints on the Delta-Mendota Canal: 14,600 acre-feet average, ranging from 23,500 to 600 acre-feet. It does not reveal who would pay for and benefit from the potential Delta-Mendota Canal capacity constraint recovery element of the Project other than noting that there are "contractors dependent of that supply."[36] Level 4 Refuge water supplies would be increased an average of 21,000 acre-feet, ranging from 25,900 to 11,600 acre-feet. Roughly half of refuge supplies would come from storage dedicated to refuge supplies (by implication, paid by Reclamation), the other half from "transfer" water made available from the exchange contractors.

The provided arithmetic shows remarkable, perhaps even miraculous, performance for an 82,000-acre-foot reservoir: a yield of 86,300 acre-feet on average and ranging from 105,300 to 53,400 acre-feet. This would be a remarkable reservoir: yielding more water on average than the capacity of the reservoir itself and in wet years yielding 39% more water than the reservoir's capacity — perhaps a demonstration that one Project feature is to pull more water from the Delta.

By comparison, a nearby 130,000-acre-foot reservoir expansion proposal at Reclamation's San Luis Reservoir off-stream reservoir's modeled average annual yield is 35,000 acre-feet, [37] a little more than a 4-to-1 storage to yield ratio. A similar but much larger reservoir, the non-federal Sites reservoir proposal, this one in the Sacramento Valley, is currently estimated to have a 6 to 1 storage to yield/new delivery ratio.[38] And Reclamation's other proposed reservoir expansion proposal and dam proposal, these times on-stream, have only mustered strikingly ineffective 12.7-to-1[39] and 18-to-1[40] storage-to-yield/new delivery ratios.

Early in discussions about the Project, the District reported that it expected to completely fill and empty the reservoir on an annual basis. This operational idea is consistent with the

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[36] There is no storage allocation displayed in the DEIS for Delta-Mendota Canal subsidence management. Perhaps the DEIS p. 3.10-6 11,000 acre-feet of storage space identified as "Flexible Storage Capacity" is intended for this use, although the space is described as "storage that could be allocated to other partners or beneficiaries." The lack of discussion on financial, institutional, and beneficiary arrangements for the Delta-Mendota Canal Capacity Constraint Mitigation Supply is a serious DEIS deficiency. The Project, after all, is expected to provide an average 14,600 acre-foot per year boost for undescribed water contractors (DEIS Table 3.10-5). Of course, Reclamation has sought and received funds to realign and reconstruct subsidence-affected canals in the near past. If it does so here on the west side, who would acquire Project storage space that would no longer benefit from this aspect of the storage expansion?

[37] https://www.fresnobee.com/opinion/opn-columns-blogs/marek-warszawski/article291957225.html

[38] "Somach Simmons & Dunn CalSim 3 ITP Sites Project modeling report," November 3, 2025, figure 5, PDF p. 18, SWRCB AHO Sites Project Authority water rights assignment and release from priority ftp website.

[39] Shasta Reservoir expansion capacity compared to Reclamation's SLWRI preferred alternative.

[40] Temperance Flat dam capacity compared to Reclamation's draft NED project in its draft EIS and feasibility report.

DEIS reservoir yield numbers, which to the extent they can be achieved at all, can only be developed by aggressive annual fill and empty operations. Notably, such operations eliminate any carry-over storage for dry-year surface water deliveries.

Later operational narrative characterizations have been different. For example, the DEIS reports that the Project EIR said, "[t]he proposed Project would improve water supply reliability by allowing CVP water supply to be stored in wet years and subsequently released for use as needed in critically dry years."[41] The DEIS itself is less specific, inconsistent with the EIR characterization, and consequently perhaps misleading: "Local water storage capacity would improve reliability of available CVP supplies, subject to CVP water rights and federal and state laws, by storing CVP water for beneficial use during drier water years."[42] "Reservoir levels would fluctuate seasonally as the reservoir would be filled when water is available and drained to meet irrigation demands as needed...."[43]

These described DEIS operation narratives are inconsistent with the DEIS operational yield numbers. If the DEIS operational narratives are true, then the described yield numbers are wrong, and the reservoir's operations and consequent yield must actually be more consistent with other off-stream reservoir operations of storage reservoirs that are being planned to rely on CVP deliveries from major conveyance facilities.

Neither option would result in an aesthetically pleasing "lake." Rather, it would frequently present an end-of-summer reservoir bathtub ring devoid of vegetation encompassing all or a significant portion of the bed of the reservoir. A completely empty bathtub ring would be guaranteed with annual fill-and-empty operations. The DEIS fails to describe this impact. Rather, it gets points for creativity and understatement when it describes the resulting operations as creating for the future reservoir bed "potential changes in plant palette that could result from changing availability of water and tolerance to variable water levels."[44]

The DEIS leaves it up to the reader to notice inconsistencies and project how actual annual fill operations will be possible. Del Puerto Water District, unless it routinely fails to use all of its CVP delivery allocations, seldom has such generous CVP delivery allocations that it can afford to put much, if any, water into this proposed reservoir, especially annual fill-and-empty operations. Not so the Exchange contractors. The Exchange contractors have large CVP contracts with high reliability. Presumably, they routinely have supply in excess of their needs and thus can "bank" a small portion of their CVP supply for later in-district use and

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[41] DEIS, p. 1-3.
[42] DEIS, p. ES-1.
[43] DEIS, p. 2-4.
[44] DEIS, p. 3.1-5. Changing plant palettes can occur as ruderal vegetation partially reclaims bare reservoir beds in the absence of the reservoir during the rainy season. It can also occur in lake-like reservoirs that experience *de minimis* changes in water elevation around reservoir edges favoring growth from plants adapted to such changes. The first scenario would be repeated annually to a greater or lesser extent in DEIS scenarios. The second scenario is not consistent with any DEIS-described operation.

use by the ambiguous "the surrounding region."[45] They have been assigned double the District's proposed reservoir capacity.

According to the DEIS, "Alternative 2 (DPCR 82 TAF) is the preferred alternative based on several factors evaluated in the engineering and economic study and this Draft EIS. Alternative 2 provides the needed storage capacity at a location that serves the needs of the Project Sponsors."[46] "Alternative 2 provides the needed amount of surface water storage…"(emphasis added).[47] Focusing on the District, which states that it serves 43,800 irrigable acres,[48] has a CVP water service/repayment contract for 140,210 acre-feet[49] for supplemental supply, and, typical of a south-of-delta agricultural CVP water service/repayment contractors, a 70,000 acre-feet average annual "shortfall" of deliveries-to contract amounts, with deliveries ranging from 0 acre-feet to full contract amounts.[50] The DEIS does not clearly describe how the District's proposed 20,000 acre-foot of storage allocation would provide the "needed" amount of storage. After all, the possible water yield from the District's storage allocation falls well short of its water use, contract maximum delivery amount, and described "shortfalls," whether at the 4-to-1 storage-to-yield ratio expected in the San Luis Reservoir raise (5,000 acre-feet average) or the miraculous[51] 1-to-1 ratio provided in DEIS pp. 3.10-17 & 3.1-18 (20,000 acre-feet). The DEIS also fails to explain how a district with such obvious (and expected) delivery "shortfalls" could achieve much benefit from such a modest or even any storage allocation. Apparently, the District's "need" is modest, although the "bill" for the Project is not.

However, according to some accounts, the District's additional surface water augmentation target is 94,000 acre-feet of new surface water—an ambitious target, although the accounts do not describe the reliability of deliveries to accomplish this target or other assumptions for the implications of meeting this target or otherwise. Interestingly, 30,000 acre-feet are being supplied by the treated wastewater from the North Valley Regional Recycled Water Project, which is expected to grow to 60,000 acre-feet per year.[52] As noted in our comments, CVP water service/repayment contractors have a range of tools to manage the variable and sometimes intermittent nature of their supplemental CVP supplies. Capturing treated wastewater that would otherwise contribute to baseflow in the San Joaquin River is one option they have focused on that reduces the need for other

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[45] DEIS, p. 3.2-11

[46] DEIS, p. ES-4. As noted earlier, the DEIS is inconsistent in describing Alternative 2 as the "locally preferred alternative" versus the "preferred project."

[47] DEIS, p. 2-21.

[48] P. 3, https://www.delpuertowd.org/files/8bcdd730d/DPWD+2020+Water+Management+Plan_Draft.pdf.

[49] DEIS, p. 1-1.

[50] DEIS, p. 1-2.

[51] The District's CVP contract "shortfall" is consistent and significant. Assuming that the District typically delivers to farms all or most of its water service/repayment contract allocations, it would be unable to benefit from its proposed storage allocations, other than by seasonal delivery rescheduling refinements.

[52] See slide 13 of the City of Modesto Utilities Department presentation on the NVRRWP: https://watereuse.org/wp-content/uploads/2016/09/NVRRP-Presentation.pdf. Presumably this water represents a loss of San Joaquin River baseflows now captured by the District.

management options. In effect, a significant new surface water supply is being implemented here. There are, of course, significant contrasts among total water use in the District, the CVP contract water available in wet years, average CVP contract use, CVP contract "shortfalls," the NVRRWP amounts, versus the District's realizable "yield" from the proposed reservoir.

The DEIS, without explanation, states that Reclamation would have to enter "into a Partnership Agreement for the Project pursuant to the WIIN Act,..." Perhaps this Partnership Agreement is Reclamation shorthand for WIIN §4007(c)(2)(B) & (C), which prescribe conditions on Secretarial actions before WIIN Act subsidies for qualifying non-federal water storage projects can take place. It would be helpful if the contours of and specific authorities for such an arrangement can be described in the EIS.

Partnership Agreements may also extend to the various benefits and responsibilities that may accrue to storage partners: There is a short, bulleted list of the "allocation of 82 TAF storage"[53]:

- DPWD — 20 TAF
- Exchange Contractors — 40 TAF
- Flexible Storage Capacity — 11 TAF (Remaining storage that could be allocated to other partners or beneficiaries)
- Refuge Water Capacity — 11 TAF

However, there is no real discussion on how these Partner storage rights/allocations can be used. In other words, there is no description of how storage rights might translate into water during normal operational scenarios. This raises many natural questions:

- Is there an order of filling with consequent storage priority if filling cannot be accomplished?
- Is the capacity to be shared by percentage of storage rights when the reservoir cannot be filled?
- Are the filling suballocations contingent on available CVP allocations? In this case, the District will seldom have contract supplies surplus to in-district need and thus available to deposit in the reservoir, not a situation that will afflict the Authority very often.
- Will capacity allocated to others be made available to partners with more reliable allocations?
- Will partners be permitted to purchase water stored by other partners? Would it matter if this capacity had been encroached by partners with higher water reliability and CVP entitlement, in effect borrowing capacity from others?

[53] DEIS, p. 3.10-16.

- Will non-partner aspiring beneficiaries be entitled to the Flexible Storage Capacity space?
- Will Reclamation's deposit into the Refuge Water Capacity account, be contingent on available refuge supplies being allocated under the CVP shortage policy and annual allocations?
- Under what circumstances will Reclamation be unable to deposit water to the Refuge Water Capacity account?
- Will non-partner CVP contractors be permitted to object to CVP deposits to this new storage reservoir when this reduces CVP supplies of others?
- Who benefits from and pays for DMC Compacity Constraint Mitigation Supply? Is this supply given a storage allocation?
- Is there a reservoir account reset?
- How long will individual partners be permitted to hold water in their storage allocations?

As discussed earlier, the DEIS speaks of Del Puerto Reservoir agricultural deliveries by the District and Authority within their district and the surrounding lands. "Surrounding" lands is not defined — we recommend considering the following questions:

- What is the extent of such a description?
- Is it the CVP place of use that can be immediately served canals connected to the District and Authority or the entire CVP place of use?
- Does that include lands that can be served indirectly by exchange?
- What happens if it is more profitable to sell water to some other CVP contractors?
- To M&I contractors?
- To contractors outside of the CVP?
- How reliable would commitments be not to sell certain contractors, locations, or types of uses?

## VI. ADDITIONAL IMPORTANT POINTS FOR CONSIDERATION

### *A. Project Water Ownership is Unclear*

*Project Water Ownership*: The DEIS is not completely clear who is to "own" any or all water (in a usufructuary sense consistent with California law) placed in the reservoir. That said, other than water associated with captured creek flows and perhaps transfers from non-CVP entitlement holders, the DEIS is peppered with references to CVP water to be placed in the proposed reservoir:

> Operation of Alternative 2 would divert CVP water at the turnout from the DMC to the reservoir, store the diverted water and any additional inflows from Del Puerto Creek, and then release the water back to the DMC for delivery to the Project

> Sponsors and refuges. Water diverted from the DMC to storage would be limited to water that has been previously stored in and released from CVP reservoirs, consistent with Reclamation's existing water rights.[54]

We assume that if these CVP contractor deliveries remain CVP water, Reclamation would, among other actions, have to obtain a rediversion right to supply new storage provided by the State Water Resources Control Board in order to place CVP water there. Such an amended right is a described purpose of the EIS.[55] Other than the above noted exceptions, the DEIS importantly does not include any mention of either the District or the Authority obtaining their own water rights to divert contract deliveries from their proposed stored CVP supply.

Regardless of ownership, the degree of control of water or the space in the reservoir is not described. The context of operational control affects the impacts of the Project and are necessary for a full review of the DEIS.

## VII. THE EIS MUST CONSIDER THE DIRECT AND INDIRECT IMPACTS OF THE PROPOSED ACTION ON: AESTHETICS, BIOLOGICAL RESOURCES, ECONOMIC/SOCIAL, PUBLIC SAFETY, CULTURAL/HISTORICAL, TRAFFIC/TRANSPORTATION

NEPA requires that all federal agencies include in every recommendation or report of proposals for legislation and other major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on the environmental impact of the proposed action. The detailed statement, the EIS, shall … "provide full and fair discussion of significant environmental impacts and shall inform decision makers and the public of the reasonable alternatives which would avoid or minimize adverse impacts or enhance the quality of the human environment." (40 CFR Sec. 1502.1, in part) The EIS must consider "effects [which] include ecological (such as effects on natural resources and the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic, social, or health, whether direct, indirect or cumulative." The direct effects of an action are those "caused by the action and occur at the same time and place." Indirect effects are those caused by the action and are later in time or farther removed in distance, but still reasonably foreseeable.

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[54] DEIS, p. 3.10-15. When Reclamation was considering the Shasta Dam and Reservoir Expansion Project, the State Water Resources Control Board said that rights for the expansion project would be contingent on Reclamation updating its expired permits for the Central Valley Project. https://www.friendsoftheriver.org/wp-content/uploads/2020/10/10-5-20_SWRCB-Comments-on-SLWRI-Draft-SEIS.pdf. Depending on Reclamation's willingness to do so, the required permits could take a while.

[55] DEIS, p. ES-2.

### *A. Aesthetics:*

NEPA clearly requires consideration of the Proposed Action on the human environment, which "… shall be interpreted comprehensively to include the natural and physical environment and the relationship of people with that environment." (40 CFR Sec.1508.14, in part)

*Reservoir Recreation*: In California, some kind of recreation, nearby, around, or in reservoirs is traditionally associated with reservoirs. This one, however, will not be open to the public,[56] and may be empty for part of the empty for part of the year depending on how the DEIS reservoir yield numbers will be met, as discussed above.

### *B. Biological Resources:*

The EIS must have complete and adequate analysis the impacts of the Proposed Action on aquatic biological and terrestrial resources.

*Harmful Algal Blooms*: Has there been any assessment done on the likelihood of HAB restrictions on project fill-and-empty operations or more ordinary reservoir operations and its effect on deliveries from the project?

*Sturgeon and other fisheries*: The DEIS reports that "USGS documented the importance of Del Puerto Creek, both as a major source of gravel to the lower San Joaquin River between the Merced and Stanislaus Rivers and as an area for the maintenance of spawning habitat for white sturgeon (Marineau et al. 2017)."[57] "Del Puerto Creek is very likely the primary source of gravels suitable for spawning in the lower San Joaquin River… These flows will help transport gravel, reduce contaminants, support native species, and eliminate non-native species. Although Del Puerto Creek contributes a small fraction of the San Joaquin River's flow, preservation of these [planned 500 cfs] flows would continue to support the flow management goals and objectives of ongoing species recovery and habitat restoration programs for the San Joaquin River (e.g., San Joaquin River Restoration Program)."[58]The BIO-FISH-1 mitigation proposal at DEIS pp. 3.5-9 & 3.5-10 emphasizing monitoring and thresholds for gravel augmentation is noted. As always, commitments made in environmental documents for future actions can be speculative. The risk that such actions gravel monitoring and augmentation actions will not take place should be assessed and mitigated.

*California Condor*: Amazingly and due to the work of the National Park Service,[59] this iconic California bird was brought back from extinction and has expanded its range into the Diablo

[56] DEIS, p. 3.11-9
[57] DEIS, p. 3.5-7.
[58] DEIS, p. 3.5-13.
[59] https://contracosta.news/2024/09/26/california-condors-return-to-mount-diablo-and-the-east-bay/

Range, Northwest of Patterson. These birds range from north of Paso Robles and San Luis Obispo (South of Patterson) to southern Santa Clara County (West of Patterson) and occasionally beyond, preferring to fly over undeveloped areas.[60] These initial flocks have been described as the first in Contra Costa in 100 years.[61] There is no discussion in the DEIS of this magnificent bird,[62]

### *C. Economic/Social:*

One of the fastest growing cities in the state in terms of job creation is the City of Patterson. This project would inundate the canyon for five miles. Upper Del Puerto Canyon does not provide any of the features of Lower Del Puerto Canyon. Instead of a small, welcoming canyon in the foothills, visitors would be faced with visual blight caused by the Proposed Action — a monolithic earthen dam wall.

### *D. Public Safety:*

*Seismic Impacts:* The EIS must include a geotechnical analysis of the landslides in the reservoir inundation area. The EIS must analyze the possibility of mass wasting due to inundation of landslides by water. Recent seismicity originating around San Ramon, Northwest of Patterson in California's Bay Area, necessitate additional caution in this area. Over 300 earthquakes have struck the area in a "swarm," possibly due to underlying fluid conditions,[63] which could affect the project.

*Spillway Design Flood and dam safety*: The DEIS states that "[t]he spillway would be proportioned to safely pass the spillway design flood."[64] This is a meaningless tautology. The design flow of a spillway is by definition determined by a spillway's maximum capacity to pass the flows through the spillway within the design freeboard and other engineering requirements. The spillway design flood is the volume and duration of an inflow event that must and can be stored in the reservoir and safely passed through spillways and other flood-release outlet works. The question at hand, rather, is how large a flow should the spillway design accommodate. For such a large dam with people downstream, the traditional standard is the quite conservative Probable Maximum Flood (PMF). However, problematically as relates to public health and safety, the DEIS does not disclose the design standards that will determine the spillway design flood.

Dams can fail from inadequately sized and engineered spillways. They also can and famously have failed from foundation failure associated with geology and engineering of

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[60] https://contracosta.news/2024/09/26/california-condors-return-to-mount-diablo-and-the-east-bay/
[61] https://contracosta.news/2024/09/26/california-condors-return-to-mount-diablo-and-the-east-bay/
[62] https://www.kqed.org/news/11962399/california-condor-flock-soars-over-contra-costa-county-for-first-time-in-100-years. https://www.modbee.com/news/local/article313818020.html.
[63] https://www.msn.com/en-us/weather/topstories/california-rocked-by-rapid-fire-earthquakes-in-area-with-72-risk-of-a-major-quake/ar-AA1TUhlN
[64] DEIS, p. 2-3.

the site and dam. The DEIS makes the effort to assert that the dam will be safely engineered and built on secure foundations. Given the size and location of the dam and nearby seismic hazards, concern about how to get this right is understandable and warranted. Even though some of this information may be Critical Energy Infrastructure Information (CEII) or other categories of information that restrict public access to information, it would be helpful for the project sponsors and the Department of Water Resources Division of Safety of Dams to share the decision-making steps with knowledgeable members of the interested public.

### *E. Traffic/ Transportation:*

Patterson is roughly at the halfway mark between the Canadian & Mexican borders. As such, Patterson is an important fuel, rest, and sustenance stop for regional commuters, interstate, and international travelers, as well as the logistics and trucking industries. The speed limit is 70 miles per hour. Construction of the main dam and reservoir will be seen from either direction and will be a distraction and may lead to an increase in accidents at the Interstate 5. The EIS must analyze the impact of the construction and placement of a main dam proximate to I-5. The dam would be readily visible from Patterson, and the noise of construction cannot be avoided. It is probable local citizens and people from other areas will be interested and drive to the construction site. This may increase parking along the side of Del Puerto Road, which is a fairly narrow 2-lane country road.[65]

*Road Relocation*: The existing Del Puerto Road allows for expansive views of the lower Del Puerto Creek valley upstream of the proposed dam site. It also has significant road shoulders with a public right of way,[66] enabling the public to stop for nature-observation purposes and enjoying the view.[67] The road relocation would cut off access to this local, regional, and beyond amenity of public importance.[68] According to the DEIS, the relocated road would have 4-foot shoulders.[69] Such constrained shoulders would prevent automobile access to safely park along the new roadway for similar purposes to the old roadway. The same is true for accommodation for motor vehicles that break down on the sometimes steep new road alignment. The new roadway instead "would provide scenic views of the landscape along the new alignment."[70] It is most people's experience that scenic views are best appreciated from a stroll away from their motor vehicle rather than within a moving

[65] Keller, David, former Mayor- City of Patterson, Council Member — City of Patterson, Board Member - Stanislaus County - Council of Governments, Chair - Patterson Planning Commission.
[66] Collector routes with an 80-foot county right of way include Del Puerto Road: https://www.stancounty.com/planning/pl/gp/gp-chapter2.pdf.
[67] DEIS, p. 3.11-4 describes these and other activities and some of the constraints on such activities, although we would characterize them somewhat differently.
[68] DEIS, pp. 2-13 & s-14.
[69] DEIS, p.2-14.
[70] DEIS, p. 3.1-5.

vehicle.[71] This should be accommodated. For this reason, the new design could also prove dangerous.

**A. THE EIS MUST EVALUATE THE CUMULATIVE IMPACTS OF ALL PROPOSED STORAGE PROJECTS ON CVP OPERATIONS**

**B.**

Cumulative effects are the impacts on the environment that result from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions." (40 CFR Sec 1508.7) The EIS needs to analyze cumulative impacts of the project with new North of Delta and South of Delta storage projects.

The EIS must analyze direct, indirect, and cumulative impacts of the project on the operation of CVP storage facilities, including Trinity, Shasta, and Folsom, and San Luis reservoirs, and describe how the project will affect storage in these facilities. This analysis must consider a reasonable range of alternatives for reservoir operations.

The EIS needs to analyze future CVP operations not only with Del Puerto Canyon Reservoir, but also in conjunction with other planned new South of Delta surface and groundwater storage facilities. The facilities studied should include major projects funded either through California Proposition 1 funds or WIIN Section 4007. The table below shows major planned projects.

| **Project** | **Current size** | **New size** | **Increase** | **Potential Sources** |
|---|---|---|---|---|
| ***SOD Surface*** | | | | |
| Del Puerto Canyon Reservoir | - | 82 TAF | 82 TAF | Del Puerto and Exchange Contractor's CVP allocations; Del Puerto Creek, NVRRWP |

[71] Perhaps the DEIS observation that "[v]iews are not currently available along the new roadway alignment so the Project would not impact existing public views from the new roadway." (p. 3.1-6) This statement ignores the obvious partial mitigation opportunity to repair the loss of the views from the existing roadway. DEIS, p. 3.11-7 & 3.11-8 says that the Project would "allow for enjoyment of scenery from the realigned Del Puerto Canyon Road (similar to how the current road is used for recreation)." Strict adherence to a 4-foot shoulder width may be inconsistent with that description.

| | | | | |
|---|---|---|---|---|
| B.F. Sisk Dam Raise and Reservoir Expansion[72] | 2.04 MAF | 2.16 MAF | 120 TAF | CVP Delta exports |
| ***SOD GW*** | | | | |
| Kern Fan GW Storage Project[73] | | Up to 100 TAF | Up to 100 TAF | Unallocated SWP Article 21 supplies. |
| Willow Springs Water Bank Conjunctive Use Project[74] | | 500 TAF (Existing facilities) | - | Will operate conjunctively with State Water Project. |

We do not see a discussion of the cumulative impacts of these proposed and planned projects in the EIS. Instead, the EIS states:

"The focus on CVP/SWP Delta operations stems from the conclusion that the Action Alternatives would also have a minimal effect on water exports from the Delta because the flow contributions from the Action Alternatives to both the Delta and the San Joaquin River are extremely small, representing only a very minor percentage of total river flow. Because the Action Alternatives would be consistent with the Coordinated Operations Agreement and would only have a minimal effect on existing CVP/SWP Delta pumping operations, the impact analysis does not evaluate changes to reservoirs or conveyance facilities within the CVP system upstream or exports downstream of the Action Alternatives."[75]

If this cumulative analysis discussion does exist in the EIS it should be made consistent with the above referenced section, emphasized and discussed comprehensively. If it does not exist, it should be added clearly and carefully considered and discussed comprehensively in the Final EIS and before the project or funding approvals move forward.

## III. THE EIS MUST IDENTIFY REASONABLE MITIGATION MEASURES

NEPA requires that "all relevant, reasonable mitigation measures that could improve the Proposed Action…be identified" including those outside Reclamation's jurisdiction.39 This includes feasible measures for any adverse environmental impact, even those that are not considered significant.40 Therefore, the EIS must include an analysis of relevant,

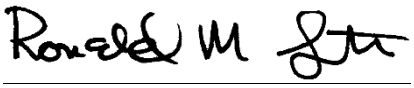
[72] U.S. Bureau of Reclamation. *Notice of Intent To Prepare a Supplemental Environmental Impact Statement for the B.F. Sisk Dam Raise and Reservoir Expansion Project, Merced County, California* https://www.usbr.gov/mp/nepa/includes/documentShow.php?Doc_ID=44427

[73] California Water Commission, Proposition 1 Water Storage Investment Program.

[74] Ibid

[75] EIS page 3.5-8

reasonable mitigation measures. For example, the EIS should consider purchase of alternative lands as a feasible mitigation measure for impacts to terrestrial corridors and oak woodlands; such resources cannot be easily replaced and include attributes difficult to match. The description of such mitigation measures should include key components such as timing of acquisitions, cost to acquire and/or restore alternative habitats, possible location of acquisitions, and net impacts/benefits to specific wildlife habitats and cultural uses.



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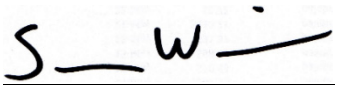

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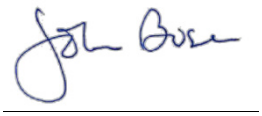

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