



**NCWA**  
Northern California Water Association



September 28, 2015

***Via First-Class Mail And Electronic Mail***

Mr. Ben Nelson  
Bureau of Reclamation  
801 I Street, Suite 140  
Sacramento, CA 95814-2536  
[bcnelson@usbr.gov](mailto:bcnelson@usbr.gov)

Re: Northern California Water Association and Glenn-Colusa Irrigation District Comments on Draft Environmental Impact Statement for the Coordinated Long-Term Operation of the Central Valley Project and State Water Project

Dear Mr. Nelson:

The Northern California Water Association (NCWA) and Glenn-Colusa Irrigation District (GCID) provide these comments on the Bureau of Reclamation's Draft Environmental Impact Statement for the Coordinated Long-Term Operation of the Central Valley Project and State Water Project ("DEIS"). As discussed below, and as detailed in other comments submitted to Reclamation on this matter, the DEIS should be revised and additional analysis should be conducted before Reclamation adopts a Final Environmental Impact Statement ("FEIS") for the proposed actions.

*Deficient Alternatives Analysis*

Under the National Environmental Policy Act ("NEPA"), each federal agency must prepare a detailed environmental impact statement ("EIS") for any "major Federal action[] significantly affecting the quality of the human environment." (42 U.S.C. § 4332, subd. (2)(c).) The EIS must include "the alternative of no action." (40 C.F.R. § 1502.14(d); *American Rivers v. FERC* (9th Cir. 1999) 187 F.3d 1007, 1020.) The no action alternative represents the "status quo," defined as the continuation of existing policy and management direction without adoption of the proposed major Federal action. (*American Rivers, supra*, 187 F.3d at pp. 1020-1021.) A valid EIS must also evaluate the proposed action and all reasonable alternatives, and include appropriate mitigation measures not already included in the proposed action or alternatives. (40 C.F.R. § 1502.14, subds. (a)-(c), (f).)

Pursuant to the Ninth Circuit's decision in *San Luis & Delta-Mendota Water Authority v. Jewell*, 747 F.3d 581 (9<sup>th</sup> Cir. 2014), Reclamation is required to prepare an EIS that discloses the effects of adopting the Reasonable and Prudent Alternatives ("RPA") contained in the United States Fish and Wildlife Service's 2008 delta smelt biological opinion ("2008 USFWS BiOp"). In this regard, the Court stated as follows:

At this point, we can only speculate about what kind of significant effects will eventually result from implementation of the BiOp because Reclamation has not yet completed its EIS. But it is beyond dispute that Reclamation's implementation of the BiOp has important effects on human interaction with the natural environment. We know that

millions of people and vast areas of some of America's most productive farmland will be impacted by Reclamation's actions. Those impacts were not the focus of the BiOp. In sum, we cannot reach an informed decision about the extent to which implementation of the BiOp is an environmental preservation action in the vein of *Douglas County* and *Drakes Bay Oyster* because we do not know how the action will impact the broader natural environment. We find no basis for exempting Reclamation from the EIS requirement. [Citation.] We recognize that the preparation of an EIS will not alter Reclamation's obligations under the ESA. *But the EIS may well inform Reclamation of the overall costs – including the human costs – of furthering the ESA.*

*Id.*, 747 F.3d at 653 (italics added).)

In accordance with the court orders, Reclamation prepared the DEIS. (DEIS, p. 1-9.) The DEIS states that its purpose is to “conduct a NEPA review to determine *whether the RPA actions cause a significant impact on the human environment.*” (DEIS, p. 2-2 (italics added).) In the DEIS, however, Reclamation defined the baseline, “No Action Alternative” conditions to include the RPA actions described in the 2008 USFWS BiOp RPA and the 2009 National Marine Fisheries Service (“NMFS”) salmonid biological opinion (“2009 NMFS BiOp”) in 2030. (DEIS, pp. 3-21 to 3-22.) The DEIS states Reclamation did this because Reclamation provisionally accepted and implemented the RPAs in the 2008 USFWS BiOp and 2009 NMFS BiOp prior to preparation of the DEIS. (DEIS, p. 3-22.) The DEIS also includes a Second Basis of Comparison that does not include implementation of the RPAs. (*Ibid.*)

By defining the No Action Alternative to include the major federal action that the courts ordered Reclamation to analyze, Reclamation has not complied with NEPA or the applicable court directives. The purpose of requiring Reclamation to prepare an EIS was to inform Reclamation of the human and environmental costs of significantly changing the status quo for the state and federal water projects by adopting the RPAs. (*San Luis & Delta-Mendota Water Authority, supra*, 747 F.3d at 653.) The DEIS does not meet this requirement because it *assumes* the RPAs are part of the status quo by defining the No Action Alternative to include them. This results in a flawed alternatives analysis because it assumes that the status quo includes incurring the significant human and environmental costs of implementing the RPAs, and then the DEIS proceeds to analyze the five alternatives against this assumption. This contravenes the analysis required by NEPA and ordered by the Ninth Circuit.

The DEIS attempts to address this issue by including a “Second Basis of Comparison,” which “represents a condition in 2030 without implementation of the 2008 USFWS BO and 2009 NMFS BO,” and then by also comparing the other alternatives to this basis of comparison. (DEIS, p. 3-3.) This analytical approach, however, does not comport with the Ninth Circuit's decision, because the DEIS does not describe the incremental changes from the Second Basis of Comparison to the alternatives as impacts of the proposed actions, and does not consider whether mitigation measures are needed to address the impacts of the alternatives when compared to the Second Basis of Comparison. Instead, the inclusion of the RPAs in the No Action Alternative leads the DEIS to improperly conclude that no mitigation is necessary for the adoption of the RPAs. If the DEIS had properly included adoption of the RPAs as an alternative, rather than as part of the No Action Alternative, then the DEIS would have been required to include appropriate mitigation measures to address the effects of the implementing the RPAs. (40 C.F.R. § 1502.14, subd. (f).) Instead, the DEIS assumes implementation of the RPAs, and fails to include appropriate mitigation measures to address their effects. (See, e.g., DEIS, pp. 5-237 to 5-261 (failing to include mitigation for effects on surface water of implementing the RPAs).)

#### *Deficient Hydrological Analysis*

The DEIS's hydrological analysis does not accurately analyze how the CVP and SWP would be operated with the combined effects of climate change and multi-year droughts, and, as a result, does not properly

analyze the impacts of the proposed actions. The DEIS acknowledges that its analysis and conclusions are probably inaccurate during extremely dry conditions that come with multi-year droughts:

Under extreme hydrologic and operational conditions where there is not enough water supply to meet all requirements, CalSim II utilizes a series of operating rules to reach a solution to allow for the continuation of the simulation. It is recognized that these operating rules are a simplified version of the very complex decision processes that CVP and SWP operators would use in actual extreme conditions. Therefore, *model results and potential changes under these extreme conditions should be evaluated on a comparative basis between alternatives and are an approximation of extreme operational conditions.* As an example, CalSim II model results show simulated occurrences of extremely low storage conditions at CVP and SWP reservoirs during critical drought periods when storage is at dead pool levels at or below the elevation of the lowest level outlet. Simulated occurrences of reservoir storage conditions at dead pool levels may occur coincidentally with simulated impacts that are determined to be potentially significant. When reservoir storage is at dead pool levels, there may be instances in which flow conditions fall short of minimum flow criteria, salinity conditions may exceed salinity standards, diversion conditions fall short of allocated diversion amounts, and operating agreements are not met.

(DEIS, p. 5-61 (italics added).)

Regarding climate change, the DEIS does not disclose the proposed alternatives' impacts against baseline conditions without projected climate change. Instead, all of the DEIS's alternatives include the projected future impacts of climate change in the 2030 timeframe. (DEIS, p. ES-7.) This makes it impossible for the reviewing public to segregate impacts that are predicted to result from climate change from the impacts that would occur due to implementation of the proposed alternatives. Furthermore, it is not possible to know whether future climate change will occur exactly as projected in the DEIS's single climate change scenario. In this regard, the DEIS does not adequately inform the public of the proposed alternatives' impacts, because the lack of an analysis of the proposed alternatives' impacts without climate change obscures how the state and federal projects are likely to operate if climate change does not occur exactly as projected in the DEIS.

#### *Conclusion*

For the foregoing reasons, the DEIS should be revised and additional analyses should be conducted before Reclamation adopts an FEIS for the proposed actions. NCWA and GCID appreciate Reclamation's consideration of these comments.

Sincerely,



David J. Guy  
President  
Northern California Water Association



Thaddeus Bettner  
General Manager  
Glenn-Colusa Irrigation District

cc: Andrew Hitchings