



September 6, 2024

U.S. Bureau of Reclamation California Great Basin Region
sha-mpr-bdo@usbr.gov via email

Re: Comments on Bureau of Reclamation DEIS (EIS No. 20240131) on Long-Term Operations of the CVP and SWP

Dear U.S. Bureau of Reclamation:

By this letter, our public interest organizations comment, pursuant to the National Environmental Policy Act (NEPA), on the U.S. Bureau of Reclamation Draft Environmental Impact Statement (Draft EIS) on Long-Term Operations of the Central Valley Project (CVP) and State Water Project (SWP.) The Draft EIS was issued for public review on July 26, 2024. These comments are submitted by Sierra Club California, AquAlliance, Center for Biological Diversity, California Water Impact Network, Environmental Water Caucus, and Planning and Conservation League. Our Table of Contents starts on the next page.

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INTRODUCTION

The U.S. Bureau of Reclamation (Reclamation) Draft EIS declares that Reclamation “prepared this Environmental Impact Statement (EIS) for the 2021 Endangered Species Act Reinitiation of Section 7 Consultation on the Long-Term Operation of the Central Valley Project (CVP) and State Water Project (SWP).” (**Draft EIS**, p. 0-1.) The Endangered Species Act and the endangered and threatened species affected by Project operations are the primary subject of the Draft EIS. So, these comments will focus on the deficiencies of the Draft EIS with respect to subject endangered and threatened species.

1. THE DRAFT EIS DOES NOT PROVIDE BROAD PUBLIC DISSEMINATION OF RELEVANT INFORMATION ABOUT AND RECLAMATION DID NOT USE ITS BEST EFFORTS TO FIND OUT ALL THAT IT REASONABLY CAN ABOUT THE ADVERSE EFFECTS OF CVP AND SWP OPERATIONS ON ENDANGERED AND THREATENED FISH SPECIES

These comments focus on 6 of the listed fish species that were subjects of the Draft EIS. Chinook Salmon, Sacramento River Winter-Run ESU (evolutionary significant unit) are endangered under both the federal and state ESAs. Chinook Salmon, Central Valley Spring-Run ESU are threatened under both federal and state ESAs. Steelhead, California Central Valley DPS (distinct population segment) are threatened under the federal ESA, not listed under the state ESA. Green Sturgeon, Southern DPS are threatened under the federal ESA, SSC (species of special concern) under state law. Delta Smelt are threatened under the federal ESA, endangered under the state ESA. Longfin Smelt, San Francisco Bay-Delta DPS were proposed endangered when the Draft EIS was issued, and are now endangered under the federal ESA, and threatened and SSC under state law. All 6 species are considered to be of tribal, commercial, or recreational importance. All 6 species occur within the Bay-Delta, all except for Delta and Longfin Smelt also occur within the Sacramento River, Chinook Salmon, Central Valley Spring-run ESU also occur within Clear Creek, and Steelhead also occur within Clear Creek,

Lower American River, Stanislaus River, and the San Joaquin River. (Draft EIS, Chapter 12, Table 12-1, p. 12-1.)

A. The Draft EIS Fails to Disclose Relevant Information that Delta Outflows Must be Increased Meaning that Exports Must be Reduced to Protect Endangered and Threatened Fish Species

Reclamation's Draft EIS hides instead of provides broad public dissemination of relevant information about the adverse effects of the CVP and SWP operations on endangered and threatened fish species. The adverse effects result from diverting freshwater flows for export thereby reducing flows in the watershed including the Sacramento River and Delta. The flows are the critical habitat for the endangered and threatened fish species.

Reclamation failed to use its best efforts to find out all that it reasonably can about the adverse effects of diverting freshwater flows for exports on the endangered and threatened fish species. Reclamation's absence of disclosure and failure to use its best efforts violated NEPA as explained below in section 1B of these comments.

(1) Water Board Information Hidden from Readers of the Draft EIS

On September 28, 2023, the State Water Resources Control Board (Water Board) issued its Draft, *Staff Report/Substitute Environmental Document in Support of Potential Updates to the Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary for the Sacramento River and its Tributaries, Delta Eastside Tributaries, and Delta*.

The Water Board Document will hereafter be referred to as the *Staff Report/SED*. Reclamation has the Water Board's *Staff Report/SED*. In fact, Reclamation commented on the Water Board's *Staff Report/SED* in its January 19, 2024, three-page single spaced letter with its seven page attachment of detailed comments. A copy of Reclamation's comment letter is attached as **Exhibit 1**. Reclamation expressed concerns about the impacts of the increases in freshwater flows called for by the *Staff Report/SED* and

resulting reductions in exports. Reclamation said, “Based on Reclamation’s review of the Draft Staff Report, the VA [voluntary agreement] alternative appears to be the only alternative that has a viable path towards implementation. In addition, we note that the VA is preferable over the unimpaired flows (UIF) alternatives and modules because the uniform application of UIF objectives across varied watersheds has disparate impacts due to the variability in hydrology in those watersheds.” (**Exhibit 1**, p. 1.) In comment 38, Reclamation said, “The reduction in exports from the Delta to reservoirs in other regions should be analyzed in more detail as a potential major impact associated with the course of the proposed action.” (**Exhibit 1**, comment 38.) Reclamation said in comment 44, “Concur with analysis of alternatives statement - *“Under the proposed VAs, impacts from changes in hydrology and supply would be smaller in magnitude and geographic scope than the changes that would occur under the proposed Plan amendments. In many instances, the VAs would have no impact or less-than-significant impacts where the proposed Plan amendments would have potentially significant impacts.”* (**Exhibit 1**, comment 44) (Emphasis in original.)

So, Reclamation was telling the Water Board that the proposed Plan amendments which proposed an unimpaired flow alternative would increase flows by reducing exports whereas the voluntary agreements which were *not* proposed for implementation by the *Staff Report/SED* would not result in reducing exports.

With one hand, Reclamation expressed its concerns in its January 19, 2024, comment letter about the *Staff Report/SED* to the Water Board. With the other hand, Reclamation concealed instead of disclosed to the public the information in the *Staff Report/SED* in the Draft EIS Reclamation issued 6 months later on July 26, 2024. The *Staff Report/SED* is not even mentioned in the Draft EIS Chapter 12 on “Fish and Aquatic Resources.” The *Staff Report/SED* is not listed as a reference for Chapter 12 in Draft EIS “Appendix B-References.” The *Staff Report/SED* is not disclosed or discussed anywhere in the Draft EIS and appendixes. Reclamation hid from the public all of the following information in its Draft EIS.

The *Staff Report/SED* is furnished to Reclamation with these comments. The *Staff Report/SED* is also available online at

https://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/staff_report.html

The Water Board's *Staff Report/SED* proposed Delta Plan amendments require *substantial increases in Delta outflows* to protect the environment including prevention of extinctions of endangered and threatened fish species.

“The last major update to the flow objectives for the protection of fish and wildlife beneficial uses in the Sacramento River watershed and Delta occurred in 1995.” (*Staff Report/SED*, Ch. 5, p. 5-3.) “The current Bay-Delta Plan is primarily implemented through water right requirements included in State Water Board Water Right Decision 1641 (D-1641).” (*Id.*) D-1641 dates back to 1999 and 2000.

Chapter 7 of the *Staff Report/SED* sets forth the Environmental Analysis for the Document. The Chapter explains, “The Sacramento/Delta update to the Bay-Delta Plan is critically important to the health and survival of the Bay-Delta ecosystem. Native species in the Bay-Delta ecosystem *are experiencing an ecological crisis.*” (Ch. 7.12, Hydrology and Water Quality, 7.12.1 Surface Water, p. 7.12.1-1) (Emphasis added.) The Chapter goes on to explain the quality of water in the channels has been degraded and,

There has been a substantial overall reduction in flows and significant changes in the timing and distribution of those flows, and species have been cut off from natal waters. These issues have led to severe declines, and in some cases extinction, of native fish and other aquatic species. The overall health of the estuary for native species is in trouble, and expeditious action is needed on the watershed level to address the crisis, including actions by the State Water Board, fisheries agencies, water users, and others to address the array of issues affecting the watershed. (*Id.*)

Chapter 7.23 of the Environmental Analysis explains in similar fashion,

The Delta is experiencing an ecological crisis in the watershed and the prolonged and precipitous decline in numerous native species of spring-run and winter-run

Chinook salmon, longfin smelt, Delta smelt, Sacramento splittail, and other species, and the factors involved in those declines...

Failing to take actions proposed by the proposed Plan amendments could result in the loss of Delta function beyond restoration of its original function and, therefore, *would result in a significant irreversible environmental change*. (Ch. 7.23, Cumulative Impact Analysis, Growth-Inducing Impacts, and Significant Irreversible Environmental Changes, p. 7.23-69)(Emphasis added.)

Chapter 7.6.2 of the Environmental Analysis explains, “Anadromous salmonids, which use habitat in the Bay-Delta estuary and upstream tributaries, have also exhibited substantial declines in population abundance in recent decades.” (Ch. 7.6.2, Aquatic Biological Resources, p. 7.6.2-4.) The Chapter goes on to explain,

It is estimated that the average annual natural production of Sacramento River winter-run Chinook salmon, Sacramento River spring-Chinook salmon, Sacramento River fall-run Chinook salmon (mainstem), and Sacramento River late fall-run Chinook salmon (mainstem) decreased between 1967 and 1991 and between 1992 and 2015 by 89, 61, 43, and 52 percent, respectively (see Table 3.4-3 in Chapter 3). Available data also show a long-term decline in escapement of steelhead from the Sacramento and San Joaquin River basins (McEwan 2001). Hatcheries now provide most of the salmon and steelhead caught in the commercial and recreational fisheries. (*Id.* p. 7.6.2-4.)

“The population abundance of Sacramento splittail, Delta smelt, and longfin smelt have declined by 98, 98, and 99 percent, respectively, since sampling began in 1967.” (Ch. 3, Scientific Knowledge to Inform Fish and Wildlife Flow Recommendations, p. 3-134.) Chapter 7.6.2 explains how the proposed increases in Delta inflows and outflows would improve flow and habitat conditions for anadromous, estuarine, and resident fish conditions to support their life stage needs. (Ch. 7.6.2, p. 7.6.2-36 and pp. 7.6.2-35-39.)

Escapement of winter-run Chinook salmon was 100,000 fish in the 1960s, as high as 35,000 fish in 1976, since declining to a few thousand. (Ch. 3, p. 3-23.) Spring-run Chinook salmon runs were as large as 600,000 fish from 1880 to 1940 but now average around 14,500 fish. (*Id.* p. 3-25.) Higher flows are protective of all Central Valley Chinook salmon and steelhead as they migrate through the Delta as juveniles. (*Id.* p. 3-42.)

“Delta outflow also affects biological resources in San Francisco Bay and the nearshore coastal ocean.” (*Id.* p.3-10.) “Increased Delta outflows provide higher water quality and habitat complexity, leading to positive effects on native fish species and foodwebs.” (*Id.*) “The abundance, reproductive success, and mortality rate of Orca whales that migrate and specialize in feeding on salmon outside the Golden Gate have been affected by the major salmon declines in recent years (Ford and Ellis 2006; Ford et al. 2010; Ward et al 2009). Their populations are limited by the availability of salmon prey, highlighting the importance of Delta outflow all the way to the top of the aquatic chain.” (*Id.*) The abundance of longfin smelt is positively correlated to Delta outflow. (*Id.* p. 3-56.)

Chapter 2 of the *Staff Report/SED* explains,

The combined effects of water exports and upstream diversions have contributed to reduce the average annual net outflow from the Delta by 33% and 48% during the 1948 through 1968 and 1986 through 2005 periods, respectively, compared with unimpaired conditions (Fleenor et al. 2010). Dayflow data also show a trend for decreasing Delta outflow through time. *Since the 1990s, there has been a reduction in spring outflow and a reduction in the variability of Delta outflow throughout the year (Figure 2.4-7) due largely to the combined effects of exports, diversions, and variable hydrology.* (Ch. 2, Hydrology and Water Supply, p. 2-106)(Emphasis added.)

“The species evaluations indicate that *multiple aquatic species in the Bay-Delta estuary are in crisis*. Recovery of native species would require both habitat restoration *and increased flow in Central Valley tributaries and the Delta*. Successful recovery of native species is not possible without parallel investment in both efforts.” (*Id.* p. 3-134)(Emphasis added.)

“Based on available information regarding several proposed water diversion and conveyance projects and pending water right applications that propose surface water diversions during the wet season, it is assumed that streamflows may be reduced during the winter and spring under the no project alternative, which could result in potentially

significant impacts on aquatic and terrestrial species and habitats in the Sacramento/Delta watershed.” (Ch. 7.24, Alternatives Analysis, p. 7.24-9.)

So, Delta outflows must be increased. That means exports must be reduced. The Executive Summary explains,

Existing regulatory minimum Delta outflows would not be protective of the ecosystem, and without additional instream flow protections, existing flows may be reduced in the future, particularly with climate change and additional water development absent additional minimum instream flow requirements that ensure flows are preserved instream when needed for the reasonable protection for fish and wildlife. (*Id.* p. 1-9.)

The proposed minimum inflow objective is 55% of unimpaired flow within an allowed adaptive range between 45 % and 65% from Sacramento/Delta tributaries. (Ch. 5, p. 5-17.) The outflow objective includes, “Inflow-based Delta outflows that would require inflows required as part of the Bay-Delta Plan, including from the Sacramento/Delta tributaries and San Joaquin River and tributaries, to be provided as outflows.” (Ch. 7.2, Description of Alternatives, p. 7.2-2.) “Changes in hydrology would increase annual Delta outflow in all months except August.” Ch. 7.12, p. 7.12.1-77.) Water exports and upstream diversions have combined to reduce the average annual Delta net outflow 33% from 1948 to 1968 and 48% from 1986 to 2005 compared with unimpaired conditions. (Ch. 2, p. 2-106.) Moreover, “Since the 1990s, there also has been a significant decline in spring outflow and a reduction in the variability of Delta outflow throughout the year (see Figure 2. 4-71 Chapter 2, Hydrology and Water Supply) due in part to water diversions as well as hydrology.” (Ch. 5, p. 5-27.) Chapter 5 explains,

Outflows are needed to provide for ecological processes, including continuity of flows from tributaries and the Delta to the Bay to protect native estuarine and anadromous aquatic species that inhabit the Bay-Delta and its tributaries throughout the year as juveniles or adults. Those outflows are needed to provide appropriate habitat conditions for migration and rearing of estuarine and anadromous fish species. (*Id.*)

Chapter 5 states, “*Current Delta outflow requirements are far below protective levels.*” (*Id.* p. 5- 28)(Emphasis added.) “The proposed Delta outflow objectives, working

with the inflow objectives, are intended to provide a comprehensive integrated flow regime that protects fish and wildlife from natal streams out to the ocean. The changes are proposed both to enhance Delta outflow protections and to ensure that existing protections are not diminished.” (*Id.*) The proposed narrative Delta outflow objective includes, “Maintain Delta outflows sufficient to support and maintain the natural production of viable native, anadromous fish, estuarine fish, and aquatic species populations rearing in or migrating through the Bay-Delta estuary.” (*Id.*)

By increasing Delta inflows and outflows the proposed Plan amendments lead to reductions in exports. Chapter 7.6.2 explains in general terms that there will be reduced exports for irrigation for agriculture and the Metropolitan Water District of Southern California (MWD.) (Ch. 7.6.2, pp. 7.6.2-96-98.) “Implementation of the proposed Plan amendments will result in changes in Sacramento/Delta water supply, including reductions to agricultural and municipal uses,..” (Ch. 7, p. 7.1-17.) The impacts of reductions in exports from the Sacramento/Delta for agricultural and municipal uses are discussed in Chapter 7.12 on Hydrology and Water Quality. (Ch. 7.12 pp. 7.12.1- 96-100.) According to the Chapter 6 explanation of the simulation period of 93 water years, 16% of years are critical, 23% are dry, and 18% are below normal collectively making up 57% of the water years. (Ch. 6, Changes in Hydrology and Water Supply, p. 6-52.) Under the proposed flow objectives of 55% unimpaired flow, exports from the Sacramento/Delta supply to the San Joaquin Valley region will be reduced by 383 TAF (thousand acre-feet per year) in critical years, 707 TAF in dry years, 510 TAF in below normal years, 277 TAF in above normal years, and 96 TAF in wet years. (*Id.* Table 6.4-20, p. 6-74.) Exports from the Sacramento/Delta supply to the Southern California region would be reduced 177 TAF in critical years, 673 TAF in dry years, 655 TAF in below normal years, 541 TAF in above normal years, and 265 TAF in wet years. (*Id.* Table 6.4-24, p. 6-79.) The referenced tables give the reductions under all scenarios under all 3 alternatives presented in the *Staff Report/SED*.

There will be a significant reduction of water exports under the proposed Plan amendments. There will also be increased releases from upstream storage not subject to export under the proposed Plan amendments.

(2) EPA Information Hidden from Readers of the Draft EIS

On January 19, 2024, the U.S. Environmental Protection Agency (EPA) issued a Comment Letter (“EPA Letter”) to the California Water Resources Control Board on the Board’s “Sacramento/Delta Draft Staff Report.” A copy of EPA’s letter and its 14 page Enclosure, EPA Comments on the September 28, 2023, *Draft Staff Report in support of updates to the Water Quality Control Plan for the San Francisco Bay-Sacramento-San Joaquin Delta Estuary for the Sacramento River and Delta watersheds*, (“EPA Comments”) is attached as **Exhibit 2** to this comment letter.

Reclamation’s Draft EIS does not mention the EPA letter at all anywhere. According to the expert EPA, Delta flows and outflows must be significantly *increased* to protect endangered and threatened fish species and also to protect public health.

According to the EPA, “The State Water Board identified the need to comprehensively review and, if necessary, amend flow objectives in response to growing concern over deteriorating aquatic life conditions, climate change, and pelagic organism decline.” (EPA Letter at 1.) Also, “EPA notes that water quality standards for the waterbodies covered in this Staff Report were last updated in 1995, despite a Clean Water Act requirement that States consider and as appropriate, make such updates at least once every three years. CWA § 303(c)(1).” (EPA Letter at 1 fn. 1.)

EPA said with respect to fish species needs,

The Staff Report along with previous State Water Board reports in which the State Water Board compiled and analyzed a significant amount of comprehensive scientific information, recognize that *substantially more flow is needed in the Delta and Sacramento-San Joaquin watersheds to support aquatic life*. Currently, six fish species (Delta smelt, longfin smelt, green sturgeon, Sacramento River winter-run Chinook salmon, Central Valley spring-run Chinook salmon, Central Valley steelhead) are listed or proposed as threatened or endangered under the Endangered Species Act. Scientific consensus indicates that

native fish population abundance is positively associated with flow volumes (e.g., Jassby et al. 1995, Sommer et al. 1997, Mac Nally et al. 2010, Tamburello et al. 2019) and that *largescale increases in both flow and habitat restoration are needed to recover and protect these and other native species.* (EPA Comments at 1)(Emphasis added.)

EPA added,

EPA recommends the State Water Board consider scientific studies published since the State Water Board’s 2017 Final Scientific Basis Report was released in the final Staff Report to support draft plan amendments. Studies published after 2017 may refine the State Water Board’s identification of critical flow thresholds that benefit native fish species and estuarine habitat. For example, recent studies on flow-survival relationships for Chinook salmon in the Sacramento River and Delta provide scientific support for the positive relationship between flow and outmigration survival and recruitment of Chinook salmon, including for late-fall, fall, and winter-run salmon (Michel, 2019), late-fall run and spring-run smolts (Cordoleani et al., 2018; Henderson et al., 2019; Michel et al., 2021; Perry et al., 2018), wild origin salmon fry (Munsch et al., 2020), and winter-run juveniles (Hassrick et al., 2022). Furthermore, since the 2016 draft Scientific Basis Report and the 2017 Final Scientific Basis Report identified a flow range of 11,400-29,200 cfs as protective of fish and wildlife uses for the February-June period, recent research has demonstrated that *even greater flow magnitudes* over a period longer than February-June are needed to be protective of zooplankton populations (Hassrick et al. 2023), which are a foundational group in the food web to support species at higher trophic levels, including listed salmonids.(EPA Comments at 3-4)(Emphasis added.)

There is more. EPA also said,

As cautioned by the State Water Board: “flow and physical habitat interact in many ways, but they are not interchangeable. The best available science suggests that *current flows are insufficient to protect public trust resources.*” Further, scientific consensus indicates that native fish population abundance is positively associated with increasing flow volumes (e.g., Jassby et al. 1995, Sommer et al. 1997, Mac Nally et al. 2010, Tamburello et al. 2019) and that *largescale increases in both flow and habitat restoration are needed to recover and protect these and other native species. Clearly, flow is a critically important driver of the health of the Bay-Delta watershed.* (EPA Comments at 6)(Emphasis added.)

According to EPA, habitat restoration is not sufficient,

This Staff Report does not demonstrate that suitable habitat area in the Sacramento and Delta watersheds is a limiting factor on estuarine and anadromous fish population growth, nor does the Staff Report provide an adequate scientific rationale to demonstrate that habitat restoration assets will increase fish abundance without *meaningful increases in tributary flows protected as Delta outflows*. Any improvements in habitat will likely be achieved only if pursued alongside *substantial increases in flow rates*, because flow is strongly and positively correlated with many indicators of native fish survival, including for salmon survival out-migrating from natal tributaries (Michel, 2019, Henderson et al. 2019), salmon survival in and through the Delta (Perry et al. 2018), and Delta Smelt post-larval survival (Polansky et al. 2021). Targeted habitat restoration with insufficient flow, on the other hand, is associated with low salmonid inhabitation (Munsch et al. 2020). (EPA Comments at 9)(Emphasis added.)

(3) National Marine Fisheries Service Information Hidden from Readers of the Draft EIS

Reclamation's Draft EIS also makes no mention anywhere at all of the National Marine Fisheries Service (NMFS) January 19, 2024, comment letter on the *Staff Report/SED*. A copy of the NMFS comment letter is attached as **Exhibit 3**. The NMFS explained in its January 19, 2024, comment letter on the Water Board's *Staff Report/SED*,

Recent publications, most notably work conducted by the SWFSC [NMFS Southwest Fisheries Science Center] (Michel 2018, Notch et al. 2020, Michel et al. 2021), outline the important relationship between flow and the survival of juvenile Chinook salmon during their outmigration through the Sacramento River and Delta. (**Exhibit 3**, p. 2.)

In supporting recommendations for year-round inflow requirements based on hydrology, the NMFS said,

Specifically, we suggest consideration of instream flows that embrace the unimpaired hydrologic flow regime to support all anadromous salmonid and sturgeon life history stages and the ecological function of critical and essential fish habitat. Instream flows should support upstream and downstream migration and rearing needs, including successful, unimpeded passage over critical riffles and

other impediments. Flow regimes should also support effective inundation of important rearing habitats such as riparian zones, floodplains and side channels.

Adoption of unimpaired flow is a useful approach to achieve a more natural flow pattern in the Sacramento River and Delta as it captures both within-year and between-year changes in hydrology.

(**Exhibit 3**, pp. 3-4.)

(4) California Department of Fish and Wildlife Information Hidden from Readers of the Draft EIS

The California Department of Fish and Wildlife (CDFW) said in its January 19, 2024, comments on the Water Board's *Staff Report/SED*,

CDFW supports the findings in the draft Staff Report and associated documents regarding the ecological status of the San Francisco Bay-Delta and its tributaries with many native fish species populations at historic low abundances and still declining. In recent years, the poor water quality conditions in the Sacramento River watershed and Bay-Delta, exacerbated by drought, *have brought fish species listed under the protection of state and federal Endangered Species Acts to levels near extinction or extirpation*. Given the impaired condition of the ecosystem, CDFW supports the State Water Board in its update of the Bay-Delta Plan and encourages the State Water Board to move forward expeditiously. (CDFW comment letter at pp. 2-3)(Emphasis added.)(A copy of the CDFW comment letter is attached as **Exhibit 4**(Emphasis added.)

CDFW has also found that Delta Smelt have become virtually extinct in Delta waters. **Exhibit 5** is the California Department of Fish and Wildlife Memorandum of January 25, 2024, reporting the 2023 Fall Midwater Trawl annual fish abundance and distribution summary. Reclamation's Draft EIS does not disclose or discuss the summary. The summary reported at p. 2,

Delta Smelt (*Hypomesus transpacificus*)

No Delta Smelt were collected at any stations from September through December. The 2023 September-December index (0) is tied with 2018-2022 as the lowest index in FMWT history. An absence of Delta Smelt catch in the FMWT is consistent among other surveys in the estuary during this period. For example, the Enhanced Delta Smelt Monitoring (EDSM) survey of the U.S. Fish and Wildlife Service (USFWS) caught only 6 Delta Smelt among 16 sampling weeks (between 9/4 & 12/19) comprised of 2054 tows (U.S. Fish and Wildlife Service 2023).

The CDFW Memorandum of December 29, 2022, reporting the 2022 Fall Midwater Trawl annual fish abundance and distribution summary, reported with respect to Delta Smelt, “The 2022 abundance index was zero and continues the trend of no catch in the FMWT (Fall Midwater Trawl Survey) since 2017.” These summaries were not disclosed or discussed in Reclamation’s Draft EIS. Improved flows will be necessary in efforts to revive the species.

(5) The Voluntary Agreements are Not the Answer

The EPA says the voluntary agreements are not the answer. The EPA explained in its January 19, 2024, Comment Letter on the *Staff Report/SED*,

Clearly, flow is a critically important driver of the health of the Bay-Delta watershed. However, the VA [Voluntary Agreement] alternatives, as currently proposed, do not provide flow to ensure year-round protection or protection in critical dry years. Rather, flow assets provided by the proposed VAs are concentrated January through June, with priority in April and May, during Dry, Below Normal, and Above Normal water years (Staff Report p. 9-5). As noted in the Staff Report, one or more life stages of native estuarine and anadromous fish, including threatened and endangered Chinook salmon and steelhead, require access to habitats across the entire watershed at all times of the year (Staff Report Table 3.4-1 and footnote 4). For this reason, it is important that the State Water Board include provisions to ensure adequate flow is available for year-round protection of designated uses in its Bay-Delta Plan amendments. Native salmonids are particularly at-risk during drought conditions. However, potential VA flow assets are not required for critical dry years on most tributaries, the Sacramento River, and the Delta (Staff Report Table 9.3-1). Further, the Staff Report indicates that during critical dry years the proposed VA alternative will result in a decrease of flows from baseline (Tables 9.5-2 to 9.5-5). (**Exhibit 2**, pp. 6-7.)

The NMFS likewise said in its January 19, 2024, comment letter that the voluntary agreements are not sufficient. The NMFS pointed out that only a small percentage of the required funding for “currently-identified habitat restoration projects” would be provided by the VA parties. Substantial funding—\$740 million hoped to be provided by state and federal agencies— “has not been secured.” (**Exhibit 3** p. 4.)

The NMFS also explained,

The VAs [voluntary agreements] propose that, in the eighth year of implementation, the Board would consider the reports, analyses, information, and data from the VA Science Program, as well as recommendations from the VA Governance Committee and the Delta Independent Science Board, to decide the future of the VA Program. *This proposed timeframe for assessing the effectiveness of the VAs is concerning, given the dire status of native fish species within the Sacramento River Basin and Delta and the urgency in improving conditions for these species to prevent further declines.* (**Exhibit 3** p. 4)(Emphasis added.)

The NMFS pointed out that the Voluntary Agreements flow assets would not be deployed during the years when ESA-listed species are at highest risk of extinction--critical water years. (*Id.*) Also, “In addition, the potential benefits of the proposed VA flow assets are further reduced in some watersheds by limiting the frequency of deployment. For example, the description of the American River states, “These flows would be deployed in three out of eight years of the VA in the above year types.” (**Exhibit 3** pp. 4-5.) This is not sufficient to provide necessary protections to ESA-listed species.

The NMFS said, “Based on the information in the Staff Report, we are highly uncertain that the VAs as currently proposed will provide for the reasonable protection of fish and wildlife beneficial uses through restoration of the Delta ecosystem over time.” (**Exhibit 3** p. 5.)

The NMFS pointed out that the Water Board’s *Staff Report/SED* modeling showed that the flow commitments in the VA Term Sheet are nonbinding and “would not provide a significant difference in average flow relative to the baseline (Alt1).” (**Exhibit 3** p. 5.) Also, habitat restoration actions required in any event “should not be considered voluntary or new contributions to ecosystem lift.” (*Id.*) Finally,

While not directly compared within the Staff Report, assessment of the total flows that would be expected under the proposed VAs is much less (range of 1-43 percent, depending on location/source and water year type) than what would occur under the Proposed Plan Amendments alternative. (**Exhibit 3** p. 5.)

The voluntary agreements would not protect the endangered and threatened fish species. As pointed out in section 1A(1) of these comments, Reclamation’s January 19,

2024, comment letter (**Exhibit 1**) on the Water Board’s *Staff Report/SED* claimed that contrary to the Water Board’s proposed Plan amendments; the voluntary agreement “alternative appears to be the only alternative that has a viable path towards implementation.” Reclamation’s Draft EIS hides from the public that Reclamation plans to march down the path opposite to the path recommended by the Water Board to actually protect the endangered and threatened fish species

B. Reclamation’s Draft EIS is Inadequate under NEPA because of the Failure of Reclamation to Use its Best Efforts to find out all that it Reasonably Can and Disclose the Relevant Information to the Public

The Ninth Circuit said in *Ground Zero Center for Non-Violent Action v. United States Department of Navy*, 860 F.3d 1244, 1257 (9th Cir. 2017), “NEPA requires disclosure ‘to the fullest extent possible.’ 42 U.S.C. § 4332.” “One of the purposes of an EIS is to ensure full disclosure of the environmental consequences of a project.” *Columbia Basin Land Protection v. Schlesinger*, 643 F.2d 585, 594 (9th Cir. 1981.) The Supreme Court said in *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989),

The sweeping policy goals announced in § 101 of NEPA are thus realized through a set of ‘action-forcing’ procedures that require that agencies take a “ ‘hard look’ at environmental consequences,” [citation omitted], *and that provide for broad dissemination of relevant environmental information.* (Emphasis added.)

The Ninth Circuit said in *Center for Biological Diversity v. Bernhardt*, 982 F.3d 723, 735 (9th Cir. 2020), “Drafting an EIS ‘necessarily involves some degree of forecasting,’ and the agency ‘must use its best efforts to find out all that it reasonably can’ when predicting the environmental effects of the proposed action. *City of Davis v. Coleman*, 521 F.2d 661, 676 (9th Cir. 1975).”

NEPA Regulation § 1502.1¹ sets forth the purpose of an EIS. Section 1502.1(b) states in pertinent part,

Environmental impact statements *shall provide full and fair discussion of significant effects* and shall inform decision makers and the public of

reasonable alternatives that would avoid or minimize adverse effects or enhance the quality of the human environment. (Emphasis added.)

Section 1502.1(c) provides in pertinent part,

Environmental impact statements shall be concise, clear, and to the point, and shall be supported by evidence that the agency has made the necessary environmental analyses. An environmental impact statement *is more than a disclosure document*. (Emphasis added.)

The information in the Water Board’s *Staff Report/SED* , and the EPA, NMFS and CDFW January 19, 2024, comment letters on the *Staff Report/SED* should have been front and center in Reclamation’s Draft EIS. Instead, all that information was hidden from the public. In addition, Reclamation failed to use its best efforts to find out all that it reasonably can about the adverse effects of diversions for Project exports on endangered and threatened fish species. As opposed to requiring best efforts, it requires bare minimum effort for Reclamation to get the public comments of sister agencies on the same project Reclamation is commenting on. The Water Board posted all the comments on the *Staff Report/SED*.

Instead of doing what NEPA requires, Reclamation hid the information in the Water Board’s *Staff Report/SED* and the EPA, NMFS and CDFW comment letters on the *Staff Report/SED* from the public. Reclamation’s Draft EIS did not provide disclosure to the fullest extent possible, did not provide broad dissemination of relevant information to the public, and did not provide full and fair discussion of significant effects of diversions of freshwater for the CVP and SWP exports on endangered and threatened fish species and their designated critical habitats. Since an EIS is *more* than a disclosure document, it must at least *include* disclosure.

2. RECLAMATION MUST PREPARE AND PUBLISH A SUPPLEMENTAL DRAFT EIS BECAUSE THE JULY 2024 DRAFT EIS IS SO INADEQUATE AS TO PRECLUDE MEANINGFUL ANALYSIS

NEPA Regulation section 1502.9(b) requires in pertinent part, “If the agency determines that a draft statement is so inadequate as to preclude meaningful analysis, the agency shall prepare and publish a supplemental draft of the appropriate portion.”

The first section of these comments sets forth information and attached exhibits from four expert agencies about the bringing of endangered and threatened fish species to levels near extinction or extirpation. They say freshwater flows must be increased which means that exports must be reduced. These expert agencies are the State Water Resources Control Board, Environmental Protection Agency, National Marine Fisheries Service, and California Department of Fish and Wildlife.

Reclamation's Draft EIS issued in July 2024 for public review is so inadequate as to preclude meaningful analysis because it fails to include the information provided by the expert agencies. It would be one thing to include the information and then present contrary information by experts amounting to substantial evidence. It is a different thing to simply omit the information provided by the four expert agencies that have things to say that Reclamation and its water contractors do not want to hear.

The public is entitled to a full and fair discussion of significant effects of diversions of freshwater for CVP and SWP operations on endangered and threatened fish species. Reclamation must prepare a supplemental Draft EIS that discloses and discusses the information provided by the four expert agencies. The supplemental Draft EIS must also disclose and discuss the expert agencies information that the voluntary agreements are inadequate to protect the endangered and threatened fish species whereas Reclamation claims the voluntary agreements "alternative appears to be the only alternative that has a viable path towards implementation."

3. RECLAMATION MUST PREPARE A SUPPLEMENTAL DRAFT EIS BECAUSE THERE ARE SUBSTANTIAL NEW CIRCUMSTANCES AND INFORMATION ABOUT THE SIGNIFICANCE OF ADVERSE EFFECTS THAT BEAR ON THE ANALYSIS

NEPA Regulation section 1502.9(d)(1) requires in pertinent part that agencies,

- (1) Shall prepare supplements to either draft or final environmental impact statements if a major Federal action is incomplete or ongoing, and:

(ii) There are substantial new circumstances or information about the significance of adverse effects that bear on the analysis.

The information from the four expert agencies set forth in the first section of these comments and included in the exhibits is substantial new information about the significance of adverse effects of diversions of freshwater for CVP and SWP operations that bears on the Draft EIS analysis. Though the information existed 6 months before Reclamation issued the Draft EIS, it is new since it was not included in the Draft EIS.

In addition, the information in the Water Board's *Staff Report/SED* -- which existed 10 months before Reclamation issued its Draft EIS --also amounts to new circumstances about the significance of adverse effects that bear on the analysis. The proposed Plan amendments *require* a reduction in exports.

There is also significant new information that came into existence *after* Reclamation issued its Draft EIS. On July 30, 2024, the U.S. Fish and Wildlife Service listed Bay-Delta longfin smelt as an endangered species under the federal Endangered Species Act. The citation for the new listing is, *Endangered and Threatened Wildlife and Plants; Endangered Species Status for the San Francisco Bay-Delta Distinct Population Segment of the Longfin Smelt*, 89 Fed. Reg. 61209 (July 30, 2024.) This rule is effective August 29, 2024. Bay-Delta longfin smelt are added to the list of endangered and threatened wildlife at 50 CFR 17.11(h.) A copy of the Federal Register pages is attached as **Exhibit 6**. The Service explained,

We consider reduced and altered freshwater flows resulting from human activities and impacts associated with current climate change conditions (increased magnitude and duration of drought and associated increased temperatures) as the main threat facing the Bay-Delta longfin smelt due to the importance of freshwater flows to maintaining the life-history functions and species needs of the DPS. However, because the Bay-Delta longfin smelt is an aquatic species and the needs of the species are closely tied to freshwater input into the estuary, the impact of many of the other threats identified above are influenced by the amount of freshwater inflow into the system (i.e., reduced freshwater inflows reduce food availability, increase water temperatures, and increase entrainment potential). (89 Fed.Reg. at 61039) (Emphasis added.)

Under the heading “Reduced and Altered Freshwater Flows,” the Service explained,

The development of dams and water delivery infrastructure built throughout the Sacramento and San Joaquin River basins for flood protection and water supply for agriculture and human consumption has greatly impacted freshwater flows into the San Francisco Bay estuary (Service 2024, section 3.1.1). The creation of this water storage and delivery system, where water is stored during the wet season and conveyed to farms and cities during the dry season, has resulted in one of the largest human-altered water systems in the world (Nichols et al. 1986, p. 569). Operation of this system has resulted in a broader, flatter hydrograph with less seasonal variability, thus changing the timing, magnitude, and duration of freshwater flows into the San Francisco Bay-Delta (Kimmerer 2004, p. 15; Andrews et al. 2017, p. 72; Gross et al. 2018, p. 8). It is estimated that the Federal and State water projects annually reduce an average of about 5 million acre-feet (MAF) of freshwater into the San Francisco Bay Delta, while other municipal or private reservoirs or diverters annually divert an additional 8 MAF of potential freshwater into the San Francisco Bay Delta (Hutton et al. 2017b, fig. 4, p. 2523). The cumulative effect of this annual average of about 13 MAF of freshwater supplies has resulted in a long-term decline in freshwater inflow into the estuary during the period of February through June relative to estimates of what flows would have been available absent water development (Gross et al. 2018, fig. 6, p. 12; Reis et al. 2019, fig. 3, p. 12). This situation has further increased the frequency of very low outflow years that, prior to water development, would have been very rare and associated only with extreme drought (Reis et al. 2019, fig. 3, p. 12).

From 1956 to the 1990s, water exports (water removed from the San Francisco Bay Delta as a result of State (State Water Project) and Federal (CVP) water projects) increased, rising from approximately 5 percent of the Delta freshwater inflow to approximately 30 percent of the Delta inflow (Cloern and Jassby 2012, p. 7). By 2012, an estimated 39 percent of the estuary’s unimpaired freshwater flow in total was either consumed upstream or diverted from the estuary (Cloern and Jassby 2012, p. 8). Water exports continue to the present day and are expected to continue in the future.

A reduction in freshwater flows into the estuary influences and impacts the location and function of the low-salinity zone (spawning and rearing habitat for longfin smelt). Freshwater inflow into the estuary and other co-linear indicators of wet versus dry conditions during the winter and spring have been statistically associated with recruitment of larvae to the juvenile life stage of BayDelta longfin smelt (Service 2024, section 3.1.1). Prior to large-scale water exports and reduced freshwater flows, the location of the low-salinity zone (as represented by the 2 percent bottom salinity position, known as X2) reached the ≤ 55 -km (≤ 34 -mi) point

in the estuary (monthly averages from February through May) and about half of all years. More recently the position of X2 reaching at least the 55-km (34-mi) point occurred only very rarely as a result of wet year conditions (Gross et al. 2018, fig. 6, p. 12 and fig. 7, p. 13) (Service 2024, section 3.1.1). *In the case of Bay-Delta longfin smelt, optimal growth and rearing conditions (food and water conditions (salinity, turbidity, circulation patterns)), especially for early life stage fish, is directly linked to freshwater inflow to the estuary.* (89 Fed.Reg. at 61039-61040)(Emphasis added.)

As to current efforts to save the longfin smelt, Delta Smelt, and several salmonid species, the Service concluded, “However, despite efforts such as those identified above, the current condition of the estuary and continued threats facing the estuary and Bay-Delta longfin smelt, *such as reduced freshwater inflow*, severe declines in population size, and disruptions to the DPS’s [distinct population segment] food resources, have not been ameliorated.” (89 Fed.Reg. at 61046) (Emphasis added.)

The Service concluded as to the threats starting with reduced freshwater flows, “These threats have put the Bay-Delta longfin smelt largely into a state of chronic population decline due to habitat loss (*reduction in freshwater flows into the estuary*), which is exacerbated by limited food resources and the impacts associated with climate change, thereby limiting its resiliency and ability to withstand catastrophic events (reduced redundancy). This decline in numbers of the Bay-Delta longfin smelt is also a reflection of the DPS’s ability to adapt to the ecosystem changes. (89 Fed.Reg. at 61046)(Emphasis added.)

The new circumstances and information require preparation of a supplemental Draft EIS. The case law under NEPA is as clear in this regard as the plain language of the supplemental EIS NEPA Regulations. The Supreme Court explained, “The CEQ [Council on Environmental Quality] regulations, which we have held are entitled to substantial deference, [citations omitted], impose a duty on all Federal agencies to prepare supplements to either draft or final EIS’s if there ‘are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts.’” (*Marsh v. Oregon Natural Resources Council*, 490 U.S. 360, 372 (1989)); see

also *Friends of the Clearwater v. Dombek*, 222 F.3d 552, 557-558 (9th Cir. 2000.) The Ninth Circuit has explained, “Given the limited public input opportunities attendant to the issuance of a final EIS, satisfying this directive” requiring agencies to submit proposed actions for public comment prior to making a final decision requires a supplemental draft EIS when necessary to allow outside reviewers to give meaningful consideration to the environmental issues involved. (*State of California v. Block*, 690 F.2d 753, 770 (9th Cir.1982.) (Requiring preparation and circulation of a supplemental draft EIS.) Additional pertinent cases requiring agencies to prepare a supplemental EIS include: *New Mexico ex rel. Richardson v. Bureau of Land Management*, 565 F.3d 683, 707-707 (10th Cir. 2009)(Supplemental EIS required, “Informed public input can hardly be said to occur when major impacts of the adopted alternative were never disclosed”); *Illio’ulaokalani Coalition v. Rumsfeld*, 464 F.3d 1083, 1102 (9th Cir. 2006) (Requiring analysis of alternative locations for an Army brigade in a supplemental EIS); *Sierra Club v. U.S. Army Corps of Engineers*, 701 F.2d 1011, 1034-1035 (2d Cir. 1983)(Upholding district court ruling that the Corps of Engineers or the Federal Highway Administration prepare a supplemental or amended EIS on fisheries issues.)

The purpose of NEPA, the NEPA Regulations, and the NEPA cases are clear. Reclamation must prepare a supplemental Draft EIS so the public will have the opportunity to review and comment on the assessment of the environmental impacts of Project operations on endangered and threatened fish species that must be, but was not, provided by the July 2024 Draft EIS.

4. THE DRAFT EIS FAILS TO INCLUDE THE REQUIRED RANGE OF REASONABLE ALTERNATIVES

NEPA requires an EIS to include “a reasonable range of alternatives to the proposed agency action,..” (42 U.S.C. §4332(C)(iii.)). Moreover, NEPA expressly requires Federal 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.” 42 U.S.C. § 4332(E). NEPA Regulation § 1502.14 requires that the EIS “analysis should sharply define the issues for the decision-maker and the public and provide a clear basis for choice among options.” Section 1502.14(a) requires that the EIS include “a reasonable range of alternatives that will foster informed decision-making.” Section 1502.1(b) states the purpose of an EIS includes informing “decision makers and the public of reasonable alternatives that would avoid or minimize adverse effects or enhance the quality of the human environment.”

An obvious reasonable alternative would be the proposed Plan amendments set forth in section 7.1 of the *Staff Report/SED* (pp. 7.1-1 to 7.1-52) by the Water Board in September 2023--10 months *before* Reclamation issued the Draft EIS. As pointed out at the beginning of section 1A(1) of these comments, Reclamation submitted a comment letter on January 19, 2024, on the *Staff Report/SED* disagreeing with the proposed Plan amendments calling instead for the so-called voluntary agreements alternative. The expert Water Board proposed Plan amendments alternative should have been but was not included by Reclamation as an alternative in the Draft EIS. As pointed out at the end of section 1A(1) of these comments, the proposed Plan amendments alternative includes specific export reductions in the different types of water years such as 707 thousand acre-feet in dry years to the San Joaquin Valley region and 673 thousand acre-feet to the Southern California region.

There is more. The January 19, 2024, comment letters by the expert EPA, National Marine Fisheries Service, and California Department of Fish and Wildlife strongly support increasing flows to the extent or even greater than that set forth in the Water Board’s proposed Plan amendments. As set forth in section 3 of these comments, the U.S. Fish and Wildlife Service July 30, 2024, listing of Bay-Delta longfin smelt as an endangered species establish that the reduction in freshwater flows by the CVP and SWP are a significant cause of the species becoming endangered.

That Reclamation and its contractors do not want to reduce exports does not permit the failure to include an obvious reasonable alternative –the Water Board’s proposed Plan amendments-- in the Draft EIS. The Water Board’s *Staff Report/SED*,

handed to Reclamation on a silver platter, should have been the basis of a Draft EIS alternative.

Another reasonable alternative left out of the Draft EIS is the *Staff Report/SED* “High Flow Alternative (Alternative 3)” described in section 7.2.3.4. (*Staff Report/SED* pp. 7.2-7 to 7.2-9.) “The numeric inflow objective and Delta outflow objective under the High Flow Alternative would require a larger amount of inflow to the Delta, and required Delta outflows would be greater than those under the proposed Plan amendments.” (*Staff Report/SED* p. 7.2-7.)

The Water Board alternatives were actually concealed from the public because Reclamation’s Draft EIS, as pointed out at the beginning of section 1A(1) of these comments, did not even disclose the existence of the *Staff Report/SED*.

The Draft EIS does include an “Alternative 3” which would provide additional Delta outflow. (**Draft EIS** pp. 3-60 to 3-75.) That is Reclamation’s only alternative which would provide significant additional Delta outflow in an effort to protect endangered and threatened fish species. There is no disclosure, however, of the Water Board’s proposed Plan amendments alternative. There is also no disclosure of the Water Board’s “High Flow Alternative” described in the *Staff Report/SED* at pp. 7.2-7. -9. The Draft EIS should have included a broader range of alternatives increasing flows including the Water Board’s alternatives and the public trust alternative discussed in the next section of these comments.

An alternative proposed by the expert Water Board and supported by the expert EPA, National Marine Fisheries Service and California Department of Fish and Wildlife comes with significant force and expertise. By failing to include or even reference the Water Board’s proposed Plan amendments alternatives, Reclamation’s Draft EIS failed to “sharply define the issues for the decision maker and the public and provide a clear basis for choice among options” contrary to NEPA Regulation § 1502.14. By omitting the Water Board proposed Plan amendments alternatives Reclamation failed to include the “reasonable range of alternatives that will foster informed decision making” required by NEPA Regulation §1502.14 (A.)

The Ninth Circuit Court of Appeals reversed a district court's denial of summary judgment to environmental plaintiffs where Reclamation had failed to sufficiently analyze alternatives. *Pacific Coast Federation of Fishermen's Assn's v. U.S. Dep't of the Interior*, 655 Fed.Appx. 595 (9th Cir., No. 14-15514, July 25, 2016) (not selected for publication). The challenged environmental document in *Pacific Coast*, issued by Reclamation under NEPA for eight interim CVP contracts, included Westland's Water District's interim contract for two-year interim contract renewals. "Reclamation's decision not to give full and meaningful consideration to the alternative of a reduction in maximum interim contract water quantities was an abuse of discretion and the agency did not adequately explain why it eliminated this alternative from detailed study." *Id.* at 599. Reclamation's "reasoning in large part reflects a policy decision to promote the economic security of agricultural users, rather than an explanation of why reducing maximum contract quantities was so infeasible as to preclude study of its environmental impacts." *Id.* at 600.

The Ninth Circuit's unpublished decision is consistent with *California v. Block*, 690 F.2d 753, 765-769 (9th Cir. 1982), where the project at issue involved allocating to wilderness, non-wilderness or future planning, remaining roadless areas in national forests throughout the United States. Like the situation here where a trade-off is involved between water exports and saving listed fish species, the Forest Service program involved "a trade-off between wilderness use and development. This trade-off, however, cannot be intelligently made without examining whether it can be softened or eliminated by increasing resource extraction and use from already developed areas." 690 F.2d at 767. Here, likewise, trade-offs cannot be intelligently analyzed without examining whether the impacts of an alternative reducing exports can be softened or eliminated by increasing water conservation and recycling, and retiring drainage-impaired agricultural lands in the areas of the exporters from production. *Accord, Oregon Natural Desert Assn. v. Bureau of Land Management*, 625 F.3d 1092, 1122-1124 (9th Cir. 2010) (uncritical alternatives analysis in EIS privileging one form of use over another violated NEPA).

The State of California released the *Water Resilience Portfolio* prepared by the California Natural Resources Agency, CalEPA, and the California Department of Food & Agriculture, on July 28, 2020. The *Water Resilience Portfolio* explains (at p. 18), “The most cost-effective, environmentally beneficial way to stretch water supplies is through better water use efficiency and eliminating water waste. Many California communities have made great progress in reducing per capita water use in recent decades.”

Reclamation’s failure to include or even disclose the existence of the Water Board’s proposed Plan amendments alternative also constituted failure to use Reclamation’s best efforts to find out all that it reasonably can and disclose relevant information to the public as set forth in section 1B of these comments. The absence of the required range of reasonable alternatives in the Draft EIS also requires Reclamation to prepare and publish a supplemental Draft EIS as set forth in sections 2 and 3 of these comments.

5. RECLAMATION FAILED TO INCLUDE THE PUBLIC INTEREST ALTERNATIVE WHICH IS A REASONABLE ALTERNATIVE SUBMITTED TO RECLAMATION DURING THE SCOPING PROCESS

On March 29, 2022, Sierra Club California and 8 other public interest organizations submitted written scoping comments on Reclamation’s Notice of Intent to prepare the EIS. A copy of the comment letter is attached as **Exhibit 7**. The comment letter included a proposed alternative entitled the “Public Interest Alternative.” The alternative is repeated here exactly as it appeared in the comment letter,

“II. THE PUBLIC INTEREST ALTERNATIVE

The remaining sections and subsections of these comments will explain why the *Public Interest Alternative* provisions set forth here are required. The *Public Interest Alternative* provisions required to be included in or with the Draft EIS are as follows:

- 1) The Draft EIS must include quantification to determine how much water is actually available in contrast to the “paper water” which is estimated to be five times more than real water.

- 2) The Draft EIS must include accurate scientific analysis of the environmental impacts of CVP and SWP Long-Term operation and their impacts on endangered and threatened fish species and their critical habitat.
- 3) The Draft EIS must include accurate scientific analysis to determine what stream, river, and Delta flows are necessary under various conditions to avoid jeopardy to endangered and threatened fish species and adverse modification of their critical habitat. The required protective flows have priority over CVP and SWP contractual quantities.
- 4) The Draft EIS must include accurate scientific analysis to determine whether diversions and exports comply with California's Constitutional prohibition of unreasonable use and waste including but not limited to diversions and exports for agricultural lands in the southern San Joaquin Valley including drainage impaired lands. The analysis will include reducing diversions and exports as a result of technological innovations such as conservation, recycling, drip irrigation and less water intensive agricultural use reducing the need for the diversions and exports.
- 5) The Draft EIS must include accurate scientific analysis to perform public trust doctrine analysis and balancing of CVP and SWP diversions and exports compared to their adverse impacts on public trust resources.
- 6) The Draft EIS must include accurate scientific analysis of adverse environmental impacts of CVP and SWP diversions on public health, including, but not limited to, worsening algal blooms adversely impacting the environmental justice communities of the Delta
- 7) The Draft EIS must include accurate scientific analysis of adverse environmental impacts of any "Potential new storage, conveyance, and other water supply infrastructure" (Reference, NOI, 87 Fed.Reg. 11095.)
- 8) The Draft EIS must include cost-benefit analysis of any "Potential new storage, conveyance, and other water supply infrastructure" (Reference, NOI, 87 Fed.Reg. 11095.)

- 9) Reclamation will reduce diversions and exports to avoid jeopardy to endangered and threatened fish species and adverse modification of their critical habitat.
- 10) Reclamation will reduce diversions and exports to avoid adverse impacts on public health including, but not limited to, worsening algal blooms adversely impacting the environmental justice communities of the Delta.
- 11) Reclamation will reduce diversions and exports to eliminate unreasonable use and waste turning to modern water measures including conservation, recycling, desalination, and agricultural water conservation.
- 12) Reclamation will stop providing Project water to impaired farmlands on the west side of the San Joaquin Valley and the Tulare Basin.
- 13) Reclamation will reduce diversion and export quantities by not providing water for high water-demand permanent crops especially on the west side of the San Joaquin Valley and the Tulare Basin.
- 14) Reclamation will reduce diversions and exports to comply with California’s Delta Reform Act.
- 15) Reclamation will reduce diversions and exports to reduce or eliminate adverse impacts on public trust resources.
- 16) Reclamation will Include in the Draft EIS these resilient resource strategies to save water. “MAF” means million acre-feet/year.

<u>Resource Strategy</u>	<u>Water Savings/Supplies (MAF/year)</u>
Ag Water Use Efficiency	5.6-6.6 MAF
Urban Water Use Efficiency	2.9-5.2 MAF
Recycled Municipal Water	1.2-1.8 MAF
Stormwater Capture	0.4-2.0 MAF
<u>TOTAL</u>	<u>10.1-14.2 MAF</u>

These resilient water strategies are part of the *Public Interest Alternative* and would save between 10.1 and 14.2 million acre-feet of water per year.²

- 17) All of the accurate scientific analysis and information developed for the above *Public Interest Alternative* provisions will be disclosed and included in the Draft EIS.

Again, this *Public Interest Alternative* --must be identified --in the Draft EIS summary. NEPA Regulation § 1502.17(a.) And *these comments* must be appended to the Draft EIS, or otherwise published by Reclamation. NEPA Regulation § 1502.17(a.)” (Sierra Club California et al. comment letter, pp. 6-9, March 29, 2022.

The Public Interest Alternative as well as the Water Board’s proposed Plan amendments alternative, and Water Board High Flow Alternative 3 are reasonable alternatives which Reclamation hid instead of including them in the Draft EIS to further its scheme to avoid and hide from the public alternatives that would reduce exports in order to increase freshwater flows to protect endangered and threatened fish species.

There is more. Sierra Club California et al. requested Reclamation to confirm receipt of their March 29, 2022, comment letter. Reclamation did confirm receipt by reply email on March 30, 2022. The text of the email confirmation is copied into a Word document attached as **Exhibit 8**. The very first paragraph of the comment letter stated an “alternative entitled the *Public Interest Alternative*” was included. (**Exhibit 8**, p. 2.) The second listing in the comment letter’s table of contents was “II. THE PUBLIC INTEREST ALTERNATIVE.” (**Exhibit 8**, p. 2.)

The second sentence in the comment letter informed Reclamation that, “The National Environmental Policy Act (NEPA) Regulations require the Draft Environmental Impact Statement (EIS) to be prepared by Reclamation to “include a summary that identifies alternatives, information, and analyses submitted by... public commenters during the scoping process for consideration by the lead and cooperating agencies in developing the environmental impact statement.” 40 C.F.R. § 1502.17(a.)

Reclamation, however ignored the comment letter, the Public Interest Alternative, the NEPA Regulations, and the citation to those regulations at the beginning of the comment letter. Reclamation did not include a summary of the comment letter including the alternative submitted, did not append the comment letter to the Draft EIS, and did not include the comments or a summary thereof in the appendixes Reclamation prepared. Consequently, Reclamation violated NEPA Regulations §§ 1502.17(a) and (b), and 1502.19(d.) Those regulations are quoted below in section 10 of these comments.

6. THE DRAFT EIS FAILS TO INCLUDE THE REQUIRED ANALYSIS OF POSSIBLE CONFLICTS BETWEEN THE PROPOSED ACTION AND THE OBJECTIVES OF STATE AND FEDERAL PLANS, POLICIES, AND CONTROLS FOR THE AREA CONCERNED

NEPA Regulation § 1502.16(a)(4) requires in pertinent part that an EIS “shall include an analysis of:”

(4) Where applicable, possible conflicts between the proposed action and the objectives of Federal, regional, State, Tribal, and local plans, policies, and controls for the area concerned, including those addressing climate change (§ 1506.2() of this subchapter);

Reclamation’s Draft EIS failed to even disclose, let alone analyze, possible conflicts between the proposed action and the objectives of Federal and State plans, policies and controls for the area concerned.

A. Water Board and Other Federal Agency Plans, Policies, and Controls Not Analyzed for Possible Conflicts

As explained in section 1A(1) of these comments Reclamation knew about the Water Board’s proposed Plan amendments set forth in its *Staff Report/SED*, commenting on it on January 19, 2024, 6 months *before* Reclamation issued its Draft EIS. Moreover, Reclamation knew that diversions for CVP operations were in conflict with the proposed Plan amendments, setting forth its opposition to any Water Board alternative other than the voluntary agreement alternative which was *not* the *Staff Report/SED* recommended alternative. The *Staff Report/SED* constitutes the objectives of the State policies and

controls for the area concerned. The Draft EIS is insufficient as a matter of law because it fails to analyze the possible conflicts between the proposed action and the policies and controls set forth by the Water Board.

The Draft EIS is likewise insufficient because it fails to analyze the possible conflicts between the proposed action and the objectives of Federal policies and controls for the area concerned. The EPA objectives were explained in section 1A(2) of these comments. The National Marine Fisheries Service objectives were set forth in section 1A(3) of these comments. The U.S. Fish and Wildlife Service objectives were set forth in section 3 of these comments.

B. California Endangered Species Act Not Analyzed for Possible Conflicts

The Draft EIS Fails to Include a California Endangered Species Act (CESA) focused alternative. The California Supreme Court said in *Mountain Lion Foundation v. Fish and Game Com. (1997)* 16 Cal.4th 105, 125, “For example, CESA establishes a policy adding significant weight to the CEQA balancing scale on the side favoring protection of a listed species over projects that might jeopardize them or their habitats. (Fish & G. Code, § 2053.)” Fish and Game Code section 2053 states “Legislative findings and declarations; alternative state agency projects” as follows, ``

(a) The Legislature further finds and declares that it is the policy of the state that public agencies should not approve projects as proposed which would jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat essential to the continued existence of those species, if there are reasonable and prudent alternatives available consistent with conserving the species or its habitat which would prevent jeopardy.

(b) Furthermore, it is the policy of this state and the intent of the Legislature that reasonable and prudent alternatives shall be developed by the department, together with the project proponent and the state lead agency, consistent with conserving the species, while at the same time maintaining the project purpose to the greatest extent possible. (Emphasis added.)

CEQA establishes the policy of the state to, “Prevent the elimination of fish or wildlife species due to man's activities, insure that fish and wildlife populations do not

drop below self-perpetuating levels, and preserve for future generations representations of all plant and animal communities and examples of the major periods of California history.” (Pub. Res. Code § 21001(c).)

Despite the listing of endangered and threatened fish species, and their ever worsening condition including the California Department of Fish and Wildlife not being able to find any Delta Smelt in its searches for them over the past seven years and the new federal listing of Longfin Smelt as endangered, the Draft EIS does not include those alternatives devoted to conserving the listed fish species and their habitat which would prevent jeopardy such as the Water Board’s proposed Plan amendments and also *Staff Report/SED* “High Flow Alternative (Alternative 3). (*Staff Report/SED* pp. 7.2-7 to 7.2-9.) The Draft EIS fails to even disclose, let alone analyze, the possible conflicts between the proposed action and the policies and controls of the California Endangered Species Act..

C. Delta Reform Act Not Analyzed for Possible Conflicts

The policy of the State of California is set forth in the Sacramento-San Joaquin Delta Reform Act of 2009 (Delta Reform Act), Water Code section 85000 et seq. Pursuant to the Delta Reform Act, the established State policy is “to reduce reliance on the Delta in meeting California’s future water supply needs through a statewide strategy of investing in improved water supplies, conservation, and water use efficiency.” (Water Code § 85021) (Emphasis added.). Another policy established by the Act is to, “Restore the Delta ecosystem, including its fisheries and wildlife, as the heart of a healthy estuary and wetland ecosystem.” (Water Code § 85020(c.)) “‘Coequal goals’ means the two goals of providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem. The coequal goals shall be achieved in a manner that protects and enhances the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place.” (Water Code § 85054) (Emphasis added.)

The Draft EIS includes no alternative focused on reducing reliance on the Delta. The Draft EIR includes no alternative focused on restoring the Delta ecosystem including its fisheries and wildlife. No alternative is included requiring water conservation, recycling, and greater water use efficiency to reduce the claimed need for exports. The Draft EIS fails to even disclose, let alone analyze, possible conflicts between the Delta Reform Act policies and controls and the proposed action.

D. The Public Trust Doctrine Not Analyzed for Possible Conflicts

The Delta Reform Act mandates, “The longstanding constitutional principle of reasonable use and *the public trust doctrine* shall be the foundation of state water management policy and are particularly important and applicable to the Delta.” (Water Code § 85023) (Emphasis added.)

The California Supreme Court made it clear in the Mono Lake case, *National Audubon Society v. Superior Court* (1983) 33 Cal.3d 419, 446, that “The state has an affirmative duty to take the public trust into account in the planning and allocation of water resources, and to protect public trust uses whenever feasible.” (Emphasis added.) Moreover,

Once the state has approved an appropriation, the public trust imposes a duty of continuing supervision over the taking and use of the appropriated water. In exercising its sovereign power to allocate water resources in the public interest, *the state is not confined by past allocation decisions which may be incorrect in light of current knowledge or inconsistent with current needs.*

The state accordingly has the power to reconsider allocation decisions even though those decisions were made after due consideration of their effect on the public trust. The case for reconsidering a particular decision, however, is even stronger when that decision failed to weigh and consider public trust uses. (*National Audubon*, 33 Cal.3d 419, 447) (Emphasis added.)

According to the Draft EIS, a claimed purpose and need for the proposed action “is to continue the operation of the CVP and the SWP, for authorized purposes, in a manner that:... Satisfies Reclamation contractual obligations and agreements;..” (Ch. 2, p. 2-1.) Reclamation, however, did nothing to consider whether the allocation decisions

made back in the 1960s may be incorrect in light of current knowledge about reduced freshwater supplies due to climate change on the one hand and/or current uses or methods of use being unreasonable on the other hand. Reclamation did nothing to consider whether the past allocation decisions are inconsistent with current needs.

The United States Supreme Court recognizes that “the States retain residual power to determine the scope of the public trust over waters within their borders.” *PPL Mont., LLC v. Montana*, 565 U.S. 576, 604 (2012). And “running waters cannot be owned—whether by a government or by a private party.” *Sturgeon v. Frost*, 587 U.S. 28, 42 (2019.)

Chapter 2 of the Water Board’s *Staff Report/SED* points out the “paper water” problem with the Sacramento/Delta watershed being over authorized for diversion by a total volume over 5 times the total annual average unimpaired outflow for the watershed. Specifically,

A review of the water right records in the Sacramento/Delta watershed included in the demand dataset shows that the total volume of water authorized for diversion in the Sacramento/Delta watershed exceeds the annual average unimpaired outflow from the Bay-Delta watershed. The total average unimpaired outflow from the Bay-Delta watershed is about 28.5 MAF [million acre-feet]/yr. The face value, or total volume of water authorized for diversion, of the active consumptive post-1914 appropriative water right records in the Sacramento/Delta watershed is approximately 159 MAF/yr (Table 2. 7-1a), *which is over five times the total annual average unimpaired outflow for the entire Bay-Delta watershed*. This total face value amount excludes statements of diversion and use (including riparian and pre-1914 appropriative claims), which are not assigned a face value amount, but account for many of the water right records in the Sacramento/Delta watershed. (Ch. 2, p. 2-117)(Emphasis added.)

Current CVP and SWP authorized contract quantities have no basis in reality because they are not based on water quantities that actually exist.

The Draft EIS failed to even disclose, let alone analyze, whether past water allocation decisions are incorrect in light of current knowledge or inconsistent with

current needs. Consequently, the Draft EIS failed to analyze possible conflicts between the proposed action and California's public trust doctrine.

E. The Principle of Reasonable Use Not Analyzed for Possible Conflicts

The Delta Reform Act mandates, "*The longstanding constitutional principle of reasonable use and the public trust doctrine shall be the foundation of state water management policy and are particularly important and applicable to the Delta.*" (Water Code § 85023) (Emphasis added.) As just one example of applicable State law, Article X of the California Constitution states,

It is hereby declared that because of the conditions prevailing in this State the general welfare requires that the water resources of the State be put to beneficial use to the fullest extent of which they are capable, and that *the waste or unreasonable use or unreasonable method of use of water be prevented*, and that the conservation of such waters is to be exercised with a view to the reasonable and beneficial use thereof in the interest of the people and for the public welfare. The right to water or to the use or flow of water in or from any natural stream or watercourse in this State is and *shall be limited to such water as shall be reasonably required for the beneficial use to be served, and such right does not extend to the waste or unreasonable use or unreasonable method of use or unreasonable method of diversion of water...* (Cal. Const. art. X, § 2)(Emphasis added.)

The state Water Code reaffirms the Constitutional policy in substantially the same language. (Water Code § 100.) Reclamation has frozen water allocations to the existing contractual allocations for water contractors. There should have been scrutiny of whether exports can be reduced as certain uses or methods of use have become unreasonable because of current and forecasted shortages of available water caused by climate change on the one hand, and technological improvements and innovations such as conservation, recycling, and drip irrigation on the other hand. The Draft EIS should have, but did not, disclose and analyze possible conflicts because of unreasonable use or unreasonable method of use of CVP and SWP exports and the proposed action.

F. The Central Valley Project Improvement Act and the ESA Not Analyzed for Possible Conflicts

The purposes of the Central Valley Project Improvement Act, CVPIA, Pub. L. No. 102-575, 106 Stat. 4706, section 3402, include: “(a) to protect, restore, and enhance fish, wildlife, and associated habitats in the Central Valley and Trinity River basins of California; (b) to address impacts of the Central Valley Project on fish, wildlife and associated habitats;..(e) to contribute to the State of California’s interim and long-term efforts to protect the San Francisco Bay-Sacramento San Joaquin Delta Estuary; (f) to achieve a reasonable balance among competing demands for use of Central Valley Project water, including the requirements of fish and wildlife, agricultural, municipal and industrial and power contractors.”

Section 3406(b), 106 Stat. 4714, of the CVPIA requires operation of the CVP “*to meet all obligations under State and Federal law, including but not limited to the Federal Endangered Species Act...*” (Emphasis added.) Section 3404(c)(2), 106 Stat. 4709, of the CVPIA requires the administration of “all existing, new, and renewed contracts in conformance with the requirements and goals of this title.”

Section 7(a)(2) of the ESA requires federal agencies to “insure that any action authorized, funded, or carried out by such agency...is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat of such species...determined...to be critical ...” 16 U.S.C. §1536(a)(2). The ESA’s “no-Jeopardy mandate applies to every *discretionary* agency action-- regardless of the expense or burden its application might impose.” *National Association of Home Builders v. Defenders of Wildlife*, 551 U.S. 644, 671 (2007) (Emphasis in original.) Endangered and threatened fish species and their critical habitat still exist and are jeopardized and their critical habitats are adversely modified by the operation of the CVP and SWP

Reclamation’s Draft EIS was required to but did not include an analysis of possible conflicts between the proposed action and the requirements of the CVPIA and the ESA.

Reclamation’s Draft EIS failed to even disclose, let alone analyze, the possible conflicts between the proposed action and the objectives of Federal and State policies and

controls for the subject water resources. The Draft EIS fails to comply with NEPA Regulation § 1502.16(a)(4.) This omission also requires preparation of a supplemental Draft EIS.

7. THE DRAFT EIS FAILS TO COMPLY WITH NEPA IN ANALYZING PROJECT IMPACTS ON THE ENDANGERED AND THREATENED FISH SPECIES

A. The Draft EIS Provides Virtually No Meaningful Information about the Impacts of Diversions of Freshwater for Project Operations on the Endangered and Threatened Fish Species

Alternative 2B is the preferred alternative. (**Draft EIS**, Executive Summary, p. 0-4.) According to the Draft EIS,

Alternative 2B is anticipated to result in changes on Delta exports from more restrictive QWEST criteria. Alternative 2B also includes an extension of the CCF operation period to December 1 through March 31 from mid-December through mid-March, effectively increasing the operation of the SWP by one month. These components were not available in time to be included in quantitative modeling. (**Draft EIS**, Executive Summary, p. 0-3.)

So, the Draft EIS fails to include quantitative modeling for the preferred alternative. For Winter-run Chinook salmon, while the Draft EIS gives minimal information on the other alternatives; no such information is given at all on preferred alternative 2B. Information on preferred alternative 2B for the other listed fish species is likewise absent from the Draft EIS. Also, the subject of Draft EIS Chapter 3 is the “Draft Alternatives.” (**Draft EIS**, Ch. 3 p. 3-1.) There is no section in Chapter 3 on preferred alternative 2B.

An EIS must include quantification if it is to serve any purpose for an ESA evaluation. (*See Center for Biological Diversity v. Bernhard*, 982 F.3d 723, 747-750 (9th Cir. 2020).)

There is material with quantitative modeling results in the appendixes. That material shows that every Reclamation alternative except alternative 3 will cause adverse impacts to the endangered and threatened fish species. Reclamation’s quantitative

material in the appendixes should have been disclosed in the appropriate Draft EIS Chapter.

Draft EIS Chapter 12 says that for Winter-run Chinook salmon the no action alternative “is expected to have an adverse to beneficial impact on juvenile and adult life stages that varies by the component.” (**Draft EIS**, Ch. 12 p. 12-46.) That same identical, uninformative “information” is given for the other 5 listed for species discussed here. (Spring- run Chinook salmon, p. 12-49, steelhead, p. 12-50, Green sturgeon, p. 12-51, Delta smelt, p. 12-53, and Longfin smelt, p. 12-55.)

Chapter 12 says that alternative 2 “is expected to have an adverse or beneficial impact from increased and decreased entrainment of juvenile LAD winter-run Chinook salmon (predicted average December through April monthly salvage at the Delta fish collection facilities range.” (*Id.*) The Draft EIS Executive Summary informs that “in drier years, Alternative 2 reduces fall and winter releases and reduces survival during migration.” (**Draft EIS**, Executive Summary p. 0-22.) These comments include Draft EIS information about alternative 2 because preferred alternative 2B “is derived from alternative 2,..” (**Draft EIS**, Executive Summary p. 0-3.)

For Spring-run Chinook salmon Draft EIS Chapter 12 says alternative 2 “is expected to have beneficial and adverse impacts from decreased and increased entrainment (predicted average March through June monthly salvage at the Delta fish collection facilities range,..” (**Draft EIS**, Ch. 12 p. 12-49.) According to the Draft EIS Executive Summary with respect to the no action alternative, “Whiskeytown Reservoir summer and fall operations may adversely or beneficially impact spring-run Chinook salmon; potential adverse impacts include low flows and elevated water temperatures in Clear Creek, while potential beneficial impacts include cold water releases to reduce thermal stress during holding, spawning, and egg incubation.” (**Draft EIS**, Executive Summary p. 0-25.) With respect to alternative 2, “adverse impacts on juvenile stranding in drier water year types may occur. In Clear Creek, operations would adversely impact spawning and rearing habitat.” (**Draft EIS**, Executive Summary p. 0-26.)

For California Central Valley Steelhead, alternative 2 “is expected to have beneficial and adverse impacts from decreased and increased entrainment (predicted average March through June monthly salvage at the Delta fish collection facilities range, all non-critically dry water year types and critically dry water year type: 1 – 3,544 fish, 7 – 105 fish) and a negligible to beneficial impact on survival of outmigrating juveniles (mean predicted survival to Chipps Island range, all non-critically dry water year types and critically dry water year type: 0.182 – 0.328, 0.134 – 0.143).” (**Draft EIS**, Ch. 12 p. 0-50.) According to the Executive Summary, “Survival of out migrating juveniles would increase or decrease dependent on Delta inflow conditions.” (**Draft EIS**, Executive Summary p. 0-28.)

For Delta smelt alternative 2, “For population abundance, there are expected adverse to beneficial impacts on the population growth rate (LCME: Geometric mean of predicted population growth rate of wet and above normal water year types and below normal, dry, and critically dry water year types: 1.24 (Wet and Above Normal) – 1.28 (Wet and Above Normal), 0.74 (Below Normal, Dry, and Critically Dry,) 0.74 – 0.77 (Below Normal, Dry, and Critically Dry), Figure 12-4). (**Draft EIS**, Ch. 12, p. 12-53.)”

For Longfin smelt alternative 2, is expected to have, “adverse to beneficial impacts to larvae (Neutrally buoyant particle fate by inflow bin entrained at exports: 45% hihi – 90% hilo; neutrally buoyant particle fate by OMR bins entrained at exports 56% at -2000 cfs – 79% at -5000 cfs) and adverse to beneficial impacts to juveniles resulting from increased and decreased entrainment (April – May predicted juvenile longfin smelt salvage range, all non-critically dry water year types and critically dry water year type: 1403 – 3757 fish, 1110 – 1170 fish).” (**Draft EIS**, Ch. 12 p. 12-56.) According to the Executive Summary, “Alternative 2 is expected to increase entrainment in all water years except in a dry year.” (**Draft EIS**, Executive Summary p. 0-31.) Also, “adverse and beneficial impacts are anticipated related to population abundance.” (*Id.*)

B. The Omission of Required Information about the Adverse Impacts of Diversions of Freshwater for Project Operations on Endangered and Threatened Fish Species Violates NEPA

NEPA requires an EIS to include a detailed statement on “reasonably foreseeable environmental effects of the proposed agency action;” (42 U.S.C. § 4332(C)(i.) The EIS must also include “any reasonably foreseeable adverse environmental effects which cannot be avoided should the proposal be implemented;” (42 U.S.C. § 4332(C)(ii.)

The NEPA Regulations require an “environmental consequences section” including analysis of “Any adverse environmental effects that cannot be avoided should the proposal be implemented” and “Any irreversible or irretrievable commitments of Federal resources that would be involved in the proposal should it be implemented;” (NEPA Regulation § 1502.16(a)(1) and (4.)

The agency must analyze “the intensity of effects.” (NEPA Regulation § 1501.3(d)(2.) That includes “The degree to which the action may adversely affect an endangered or threatened species or its habitat, including habitat that has been determined to be critical under the Endangered Species Act of 1973.” (NEPA Regulation § 1501.3(d)(2)(vi.) NEPA Regulation § 1502.16(a) imports the § 1501.3 discussion of “significance of those effects” requirement into the required environmental consequences section of an EIS. Reclamation’s Draft EIS does not discuss the significance of adverse effects and does not analyze *the degree to which* diversions of freshwater for Project operations may adversely affect the endangered and threatened fish species.

The EIS to be prepared must contain high-quality information and accurate scientific analysis. *Lands Council v. Powell*, 395 F.3d 1019, 1031 (9th Cir. 2005.) If relevant data is not available or not complete the EIS must disclose that fact. (*Id.*)

The profound question is whether the diversions for Project operations will or may cause or contribute to the extinction of one or more of the endangered and threatened fish species. The Draft EIS is silent in response to that question. As true of other omissions, Reclamation must prepare a supplemental Draft EIS to discuss the significance of adverse effects on endangered and threatened for species and the degree to which the diversions for Project operations may adversely affect those species.

C. The Omission of any Irreversible and Irretrievable Commitments of Federal Resources which would be Involved in the Proposed Agency Action Violates NEPA

An EIS must include “any irreversible and irretrievable commitments of Federal resources which would be involved in the proposed agency action should it be implemented.” (42 U.S.C. §4332(v) (NEPA Regulation § 1502.16(a)(4.)

The Water Board’s *Staff Report/SED* concluded that “Failing to take actions proposed by the proposed Plan amendments could result in the loss of Delta function beyond restoration of its original function and, therefore, *would result in a significant irreversible environmental change.*” (Ch. 7.23, p. 7.23-69) (Emphasis added.)

So, an expert agency has determined that continuing merrily along without increasing freshwater flows by reducing exports will likely result in significant irreversible environmental change. The endangered and threatened fish species constitute Federal resources but there has been no disclosure let alone analysis of the likely irreversible commitment of those Federal resources in Reclamation’s Draft EIS. That is yet another violation of NEPA.

8. THE DRAFT EIS FAILS TO COMPLY WITH NEPA IN ANALYZING PROJECT IMPACTS ON PUBLIC HEALTH IN ENVIRONMENTAL JUSTICE COMMUNITIES

The California Department of Water Resources (DWR) Draft EIR on State Water Project long-term operations was issued on May 29, 2024. DWR’s Draft EIR admits, “The term CHABs refers to Cyanobacteria harmful algal blooms that have the potential to harm human health or aquatic biota. CHABs are a widespread problem in water bodies worldwide.” (Draft EIR, Ch. 5, Surface Water Quality, p. 5-9.) The Draft EIR also admits,

Delta CHAB and cyanotoxin monitoring has generally been inconsistent and incomplete in terms of geographic coverage, which makes it difficult to assess changes over time. Nevertheless, the California Cyanobacteria and Harmful Bloom Network’s Harmful Algal Bloom Incident Report Portal and published

studies suggest that cyanotoxins are increasing since they were first detected in the Delta. (*Id.* p. 5-11.)

Reclamation's Draft EIS admits, "Some species of cyanobacteria produce toxins, referred to as cyanotoxins, which can have adverse health effects on humans, domestic animals, fish and other aquatic biota, and other wildlife." (Ch. 21, Public Health and Safety, p. 21-2.)

According to the Water Board's *Staff Report/SED*, "Harmful algal blooms (HABs) have become a regular occurrence in the Delta since 1999 (Lehman et al. 2005, 2013; Kurobe et al. 2013). In freshwater systems like the Delta, HABs are mostly attributable to cyanobacteria (Kudela et al. 2023)." (Ch. 4, Other Aquatic Ecosystem Stressors, p. 4-16.) "Cyanobacteria species secrete hepato and central nervous system toxins, *which can be toxic to humans* and aquatic wildlife (Lehman et al. 2008; Berg and Sutula 2015). (*Id.* p. 4-16) (Emphasis added.) "Delta communities have expressed significant ongoing concerns regarding proliferation of HABs in the Delta and requested that the Water Boards take actions to address these concerns. HABs are a component of the phytoplankton community with *potentially severe impacts* on fish and wildlife, as well as *on human and pet health and safety*. HABs have been increasing in recent years, especially in the Bay-Delta, although different species and toxins tend to occur in the more saline San Francisco Bay than in the fresher Delta (Kudela et al. 2023). HAB occurrence is related to flow such that HABs benefit from lower inflows, high residence times, and higher stratification (Kudela et al. 2023), as well as temperature, and nutrients." (Ch. 5, Proposed Changes to the Bay-Delta Plan for the Sacramento/Delta, p. 5-60)(Emphasis added.)

The EPA's January 19, 2024, comment letter (**Exhibit 2**) on the *Staff Report/SED* said,

The Bay-Delta and its watersheds have also experienced increased frequency of harmful algal blooms (HABs) affecting aquatic life and human health. Restoration of higher flow volumes may address key drivers of HABs, including increased

stream temperature and water residence time (Kudela *et al.* 2023; Berg & Sutula 2015, Lehman *et al.* 2013). EPA reiterates that swift action is needed to address the imperiled state of the Delta and the species, communities, and economies that depend on this ecosystem for survival. (EPA Comment Letter, pp. 1-2.)

Stockton urban waterways are stagnant and thick with algal scum and toxins. Algae blooms are regularly found from Stockton to Discovery Bay with smaller ones becoming visible in sloughs between the cities. The CHABs public health situation also involves environmental justice. According to a *Restore the Delta Report*,

Percentage-wise, the Delta region has the largest environmental justice community in California, with parts of Stockton hitting the 95th percentile for economic distress, and small Delta towns comprised of 52% of residents for whom English is not their first language. The economic distress of many Stockton environmental justice communities exceeds that of all other environmental justice communities of California.³

Delta counties including San Joaquin and Contra Costa have minority populations exceeding 50% and must be “evaluated for environmental justice impacts.” (**Draft EIS**, Ch. 17, Environmental Justice, p. 17-2.) Men and women, girls and boys, in economic distress do not have swimming pools and do not belong to clubs that have swimming pools. Many do not have air-conditioning at home. The Delta region is extremely hot in the summer. Residents in economic distress are the most likely to cool off in Delta waters. Some of these residents fish in Delta waters for part of their food supply.

Reducing freshwater flows for CVP and SWP exports is worsening over time and is now reaching the level of a public health and environmental emergency. On July 9, 2024, the Water Board posted a “danger” advisory “after testing of water samples collected from multiple locations of Discovery Bay in Contra Costa County confirmed the presence of harmful algal blooms, according to the State Water Resources Control Board and Central Valley Regional Water Quality Control Board. HABs can pose a threat to people and pets, and the advisory urges people to avoid swimming, boating and other activities to keep pets out of the water until further notice.” (Water Boards News Advisory, **Exhibit 9**.) The “danger” advisory also explained,

Cyanobacteria, a group of organisms that form HABs, can produce potent toxins. Health risks are associated with HABs, as they produce dermatotoxins that can cause itching skin and rashes, as well as gastrointestinal distress, headaches, agitation and weakness, or abnormal breathing if HAB material is swallowed while swimming. Dogs and children are most susceptible to exposure because of their smaller body size, increased potential to swallow water while swimming and tendency to stay in the water longer. If you suspect exposure, wash your children and dog immediately. (*Id.*)

Reclamation's Draft EIS as explained earlier fails to disclose EPA's January 19, 2024, comment letter. No evaluation whatsoever is given as to the ongoing impacts of CVP and SWP diversions reducing freshwater flows on the worsening harmful algal blooms. (**Draft EIS**, Ch. 21, pp. 21-4 to 21-5.)

Reclamation's Draft EIS does contain an admission with respect to CHABS and cumulative impacts,

The No Action Alternative would continue with the current operation of the CVP and may contribute to potential changes to Public Health and Safety resources. The action alternatives are anticipated to result in changes in Valley fever related to changes in irrigated agricultural land, methylmercury production and resultant changes in bioaccumulation in fish for human consumption, and public exposure to cyanotoxins due to an increase in CHABS. The magnitude of the changes is dependent on alternative and water year type. Therefore, the No Action 21-6 Alternative and the action alternatives may contribute to cumulative changes to THE DRAFT EIS Public Health and Safety resources as described in Appendix X, Public Health and Safety Technical Appendix and Appendix Y, Cumulative Impacts Technical Appendix. (Ch. 21, pp. 21-5 to 21-6.)

There is no analysis of "the intensity of effects" and "The degree to which the action may adversely affect public health and safety." That violates NEPA Regulation § 1501.3(d)(iv.) There is no analysis of "The degree to which the action may adversely affect communities with environmental justice concerns." That violates NEPA Regulation § 1501.3(d)(vii.)

9. THE DRAFT EIS ANALYSIS OF THE DELTA CONVEYANCE PROJECT OPERATIONS IS INADEQUATE

Instead of addressing the Delta Conveyance Project in the Draft EIS, Reclamation put its analysis in Appendix Z. Instead of evaluating the proposed action— Alternative 2B-- the evaluation is of Alternative 2. (**Appendix Z** p. Z-1.) Appendix Z states,

The analysis in the Final EIR assumes the continued operation of existing SWP facilities as permitted under existing regulations that include the 2019 Biological Opinions and the 2020 Incidental Take Permit (ITP). Due to the timing of the Delta Conveyance Project environmental analysis, it was not possible to perform new modeling runs with the proposed change in the operation of existing SWP facilities as a result of implementation of Alternative 2 and Delta Conveyance Project; therefore, the analysis in this appendix is not quantifying potential additive effects of operating the CVP. Alternative 2 and Delta Conveyance Project. Future development of a combined modeling analysis will facilitate a better understanding of potential project interactions. (**Appendix Z** p. Z-1.)

So, Reclamation’s Draft EIS and appendixes fail to include any actual quantifying analysis of the impacts of CVP and SWP diversions of freshwater with the new, upstream diversions of freshwater for exports accomplished by the Delta Conveyance Project tunnel. Also, operation under existing regulations is assumed as opposed to the reduced diversions proposed by the Water Board and supported by the EPA, National Marine Fisheries Service, and California Department of Fish and Wildlife.

Appendix Z admits “the Delta Conveyance Project would provide additional export capacity.” (**Appendix Z** p. Z-9.) According to Appendix Z, with the Delta Conveyance Project operating,

As discussed in the Delta Conveyance Project Final EIR Chapter 6, Section 6.3.2.2, Project Alternatives, under, average annual SWP deliveries would increase for the long-term average (15%) and dry and critical water years (13%). Average annual SWP Table A deliveries are expected to increase under the long-term average (13%) and dry and critical water years (23%). SWP Article 56 deliveries would increase under the long-term average (11%) and dry and critical water years (29%). SWP Article 21 deliveries would increase under the long-term average (254%) and would remain the same during dry and critical water years. CVP deliveries would increase under the long-term average (1%) and during dry and critical water years (2%). (**Appendix Z** p. Z-23, -24.)

So, there is no actual analysis whatsoever by Reclamation of the degree to which Delta Conveyance Project operations may adversely affect an endangered or threatened

fish species or its habitat in violation of NEPA Regulations §§ 1502.16(a) and 1501.3(d)(@)(vi.) There is likewise no analysis whatsoever by Reclamation of the degree to which Delta Conveyance Project operations may adversely affect public health and safety. That violates NEPA Regulation § 1501.3(d)(iv.) There is no analysis of the degree to which the action may adversely affect communities with environmental justice concerns. That violates NEPA Regulation § 1501.3(d)(vii.) There is no analysis of possible conflicts of the Delta Conveyance Project with the objectives of federal and state plans, policies and controls discussed above in section 6 of these comments.

There is more. The U.S. Army Corps of Engineers issued a Draft EIS on the Delta Conveyance Project on December 19, 2022. (EIS No.20220183.) The U.S. Environmental Protection Agency (EPA) issued its comment letter on March 16, 2023, on the Army Corps' Draft EIS. The Army Corps' Draft EIS only covered construction of the Project; it did not cover Project *operations*. The EPA explained in its comment letter to the Army Corps that the EIS must cover the impacts of Project operations. Our organizations' supplemental comment letter of March 30, 2023, explained to the Army Corps that it would have to prepare a supplemental Draft EIS because the profoundly significant subject of Project operations could not be addressed for the first time in a Final as opposed to supplemental Draft EIS.

There must be a supplemental Draft EIS prepared on operations of the Delta Conveyance Project. If Appendix Z of Reclamation's Draft EIS is intended to be the federal agency Draft EIS on operations of the Delta Conveyance Project that is a clear violation of NEPA's requirements for comprehensive environmental analysis and full disclosure. The Delta Conveyance Project is a huge, expensive public works project that would further reduce Delta flows instead of increasing them as proposed by the Water Board and supported by the EPA, National Marine Fisheries Service, and California Department of Fish and Wildlife. Delta residents and users, Delta region counties and cities, and public interest organizations are entitled to clear notice in the form of a document entitled "Delta Conveyance Project Draft EIS" that covers Project operations for public review and comment. It would be a violation of everything that NEPA stands

for if Reclamation and perhaps other agencies such as the Army Corps claim that the subject of Delta Conveyance Project *operations* including the impacts of substantial diversions of freshwater flows on endangered and threatened fish species and on the public health of Delta residents and users has been addressed by *an Appendix* of a Draft EIS on long-term operations of the CVP and SWP.

10. THE DRAFT EIS FAILS TO INCLUDE SCOPING COMMENTS OR SUMMARIES THEREOF

NEPA Regulation § 1502.17 requires,

(a) The draft environmental impact statement or appendix shall include a summary of information, including alternatives and analyses, submitted by commenters during the scoping process for consideration by the lead and cooperating agencies in their development of the environmental impact statement.

(b) The agency shall append to the draft environmental impact statement or publish all comments (or summaries thereof where the response has been exceptionally voluminous) received during the scoping process.

NEPA Regulation § 1502.19 requires inclusion in a prepared appendix in pertinent part,

(d) For draft environmental impact statements, all comments (or summaries thereof where the response has been exceptionally voluminous) received during the scoping process that identified information for the agency's consideration.

Reclamation has not included scoping comments in either the Draft EIS, or the appendixes. That failure violates NEPA Regulations §§ 1502.17 and 1502.19. This failure prejudiced commenters on the Draft EIS by depriving them of being able to see the scoping comments that had been made. As was shown earlier in section 5 of these comments, among the information by commenters hidden from cooperating agencies and the public was the Sierra Club California et al. comment letter of March 29, 2022, which included the Public Interest Alternative.

11. THE DRAFT EIS INAPPROPRIATELY EXCLUDES NUMEROUS TERRESTRIAL BIOLOGICAL RESOURCES FROM ANALYSIS

The DEIS acknowledges that the proposed Alternatives, including the No Action Alternative, will have impacts on numerous terrestrial biological resources. However, complete analysis of terrestrial biological resources is limited to only a few species. The exclusion of other species that may also be impacted by CVP operations is not justified.

Throughout the analysis of terrestrial biological impacts, western pond turtle, foothill yellow-legged frog, bank swallow, yellow-billed cuckoo, giant garter snake, and least Bell's vireo are variously considered, depending on the region and alternative of focus. All of these species were determined to experience a "low" to "moderate" effect due to project operations. However, numerous other species, including riparian woodrat, California clapper rail, white-faced ibis, Suisun song sparrow, yellow-breasted chat, least tern, California black rail, least bittern, greater sandhill crane, saltmarsh common yellowthroat, yellow warbler, western snowy plover, and trinity bristle snail were all also identified as having a "low" potential to occur in the Project area, i.e. "Suitable habitat for this species has the potential to overlap with the project area and/or is present in some areas proposed for operational changes." (App. P, p-38). The DEIS should also analyze the effects of the proposed operations on these species. Additionally, such determinations are based solely on review of existing literature and databases, and do not include any actual on-the-ground surveys or habitat assessments. To determine likelihood of occurrence, especially because such determinations influence the inclusion or exclusion of species from analysis, the DEIS should include general biological surveys and species-specific protocol surveys.

Even if the potential for impacts is low, these species may still be impacted by the project, and those impacts must be disclosed, analyzed, and mitigated. In fact, NEPA requires an analysis of foreseeable impacts, which should include impacts to species that inhabit riparian and upland habitats that may be altered as a result of changes in flows due to the proposed alternatives.

Further, the analysis excludes any consideration of impacts on species present in CVPIA refuges from its analyses of terrestrial biological resources. The DEIS claims that “Reclamation does not control the distribution of water to CVPIA wildlife refuges beyond initial water year allocations. Therefore, the changes or impacts described for terrestrial resources associated with CVPIA refuges are outside the scope of this alternatives analysis.” (13-5, 6). Yet the DEIS goes on to say “The last remaining reproductive population of the giant garter snake in the San Joaquin Valley exists in CVPIA refuges. Reduced water deliveries to CVPIA wildlife refuges in the San Joaquin River under Alternative 3 would have impacts on the availability of aquatic habitat for giant garter snake and northwestern pond turtle.” (13-10). The DEIS acknowledges the impacts of reduced deliveries on giant garter snake and northwestern pond turtle in one context, but claims they are unable to do so in another. The DEIS does include impacts of water allocations, which will necessarily affect distribution to CVPIA refuges. The DEIS must therefore include the impacts to terrestrial biological resources in CVPIA refuges, including giant garter snakes and northwestern pond turtles, in its analysis of all alternatives and in all relevant watersheds.

The DEIS also limits its analysis of impacts to terrestrial biological resources to potential impacts from altered flows within watercourses only. However, the project includes the installation and operation of transmission lines, which should be considered part of long-term CVP operations. Transmission lines may impact numerous special-status bird species, including Swainson’s hawk and sandhill cranes. Such impacts must be included in the analysis of terrestrial biological impacts. The failure to include a consideration of the impacts of transmission lines is an egregious omission.

A. The DEIS Fails to Consider Alternatives that Minimize Impacts to Terrestrial Biological Resources

The DEIS includes analysis of impacts under five different alternatives, including the No Action Alternative. In numerous cases, all alternatives will have negative impacts on certain terrestrial biological resources. For example, the DEIS states that in the Sacramento River region, “Seasonal operations under all action alternatives may reduce natural variability beyond major flood events and will likely contribute to the further reduction of natural successional processes that result in non-climax stage riparian woodlands and loss of suitable western yellow-billed cuckoo habitat over time.” (13-7). That is to say, all alternatives will negatively affect western-yellow billed cuckoo. No alternatives were considered that would reduce the impact of western-yellow billed cuckoo, a federally-threatened species, along the Sacramento River.

The DEIS should consider a wide range of alternatives including at least one that prioritizes the minimization of impacts to terrestrial biological resources. Without such an alternative, it is impossible for the public or decisionmakers to make informed decisions.

B. The Proposed Mitigation for Impacts to Terrestrial Biological Resources is Inadequate

For species such as those threatened and endangered species considered in the DEIS, which are already declining due to multiple (and often synergistic) threats, any negative impacts—no matter how localized—can diminish the species’ resiliency and makes it that much harder to avoid extinction. Proper analysis and mitigation of a project’s impacts is therefore essential to maintaining biodiversity and the health of our ecosystems.

The DEIS acknowledges numerous impacts to terrestrial biological resources under all proposed alternatives. However, mitigation is not proposed for all of the species that will experience impacts. Rather, the DEIS proposed mitigation for only three species—bank swallow, foothill yellow-legged frog, and northwestern pond turtle—excluding numerous others. For example, the DEIS states that giant garter snake (13-5) and western yellow-billed cuckoo (13-7, 9) will both experience impacts under various

alternatives, but no mitigation for these impacts is proposed, and no alternatives are explored that would minimize or avoid impacts to these listed species. The DEIS provides no justification for this omission. This is unacceptable, and inconsistent with Reclamation's duties under section 7(a)(1) of the Endangered Species Act.

Further, the mitigation that is proposed is extremely inadequate. The DEIS states that "Reclamation developed mitigation measures for federally listed species with the first goal being to avoid effects on the species and the second goal being to minimize and compensate for unavoidable effects." (App. P, p-52). However, the majority of the proposed mitigation accomplishes neither. In the case of the bank swallow, MM BIO-1 does provide mitigation to minimize impacts through the development of flow criteria. However, the mitigation does not provide any requirements in the case that bank swallows *are* impacted by project operations—if the flow criteria are not 100% effective at preventing impacts to bank swallow. Similarly, MM BIO-2 (focused on the foothill yellow-legged frog) and MM BIO-3 (focused on northwestern pond turtle) also fail to provide any mitigation if the project does affect these sensitive species, which is extremely likely based on the information provided in the DEIS. According to the mitigation measure, there is no obligation to mitigate those impacts at all. The DEIS should include compensatory measures to ensure that if any impacts that do occur, they will be fully mitigated.

Even more egregious, MM BIO-2 and MM BIO-3 provide no mechanism of impact avoidance or minimization either. Instead, the DEIS relies on vague and deferred plans to monitor the species: "develop and implement field evaluations to inform real-time groups to minimize impacts." The DEIS provides no actual detail about how, when, or with what frequency such monitoring shall occur, or how the data gathered from such monitoring will inform management (p-97). The lack of concrete detail or enforcement mechanism makes these mitigation measures entirely ineffective. Additionally, without a detailed information about how the proposed field evaluations could lead to minimized

impacts, decisionmakers and the public cannot compare the No Action alternative to the Proposed Action or other alternatives.

12. RECLAMATION FAILED TO USE UP TO DATE MODELING FOR THE DRAFT EIS

The modeling used in the 2019 Biological Opinion relied upon 2010 data inputs which stopped in 2003. This failure to use up to date data permeates the entire DEIS analysis and fails to consider more recent data regarding climate change including drought impacts to water supply, water quality and temperatures. Up to date data is required in an EIS. *Lands Council v. Powell*, 385 F.3d 1019, 1031 (9th Cir. 2005.)

13. RECLAMATION'S ARBITRARY CVP GEOGRAPHICAL EXTENT LIMITS MEANINGFUL ANALYSIS AND IMPACT DISCLOSURE

Although the Trinity River Division (TRD) is part of the CVP, Reclamation did not include or analyze components associated with the Trinity River portion of the TRD. The failure to analyze and disclose impacts creates an inflated water bias regarding the water available to the CVP. Components of the TRD are associated with transbasin diversions into Whiskeytown Reservoir. As a result there was not analysis of any aspects of the proposed action on the Trinity and Klamath rivers, or their associated listed species (i.e., Pacific eulachon, Southern Oregon/Northern California Coast coho salmon) and designated critical habitats. Neither was production of currently-unlisted Upper Klamath-Trinity River Chinook salmon evaluated as it pertains to Chinook salmon availability as prey for Southern Resident killer whales.

14. RECLAMATION MADE IT IMPOSSIBLE TO COMMENT COMPREHENSIVELY ON THE DRAFT EIS

NEPA Regulation § 1502.7, specifies that,

The text of final environmental impact statements, not including citations or appendices, *shall* not exceed 150 pages except for proposals of extraordinary complexity, which *shall* not exceed 300 pages. (Emphasis added.)

The text of the Draft EIS exceeds 300 pages, amounting to a total of 415 pages. There are also 113 separate appendixes and attachments amounting to 18,738 pages.

Reclamation issued the Draft EIS on July 26, 2024, providing a 45-day public review period ending September 9, 2024. That is the minimum time an agency is permitted to afford.

Persons seeking to comment on the Draft EIS also have other things they need time to do. They need to eat, sleep and need to do other work and things inside and outside the home. It is not possible for a normal human being to read, comprehend, and be able to respond with detailed, focused written comments to the huge volume of material on a proposal “of extraordinary complexity” within 45 days.

Sierra Club California and 7 other public interest organizations requested Reclamation in writing on August 8, 2024, to extend the comment period for 90 days. A copy of that request is attached as **Exhibit 10**. The Hoopa Valley Tribe made a similar request on August 21, 2024. A copy of that request is attached as **Exhibit 11**.

Reclamation did not extend the comment period. Reclamation did not even respond stating it would not extend the comment period.

CONCLUSION

Reclamation has failed to proceed in the manner required by NEPA. Reclamation’s Draft EIS is legally insufficient. Before proceeding to issue a Final EIS, Reclamation must first prepare a supplemental Draft EIS and recirculate it for public review and comment.

The contact for this comment letter is E. Robert Wright, Counsel, Sierra Club California (916) 557-1104 or bwrightatty@gmail.com . We will do our best to answer any questions you may have.

Sincerely,



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EXHIBIT LIST:

- 1 Reclamation 1 19 24 comment letter
- 2 EPA 1 19 24 comment letter
- 3 NMFS 1 19 24 comment letter
- 4 CDFW 1 19 24 comment letter
- 5 CDFW 1 25 24 Memorandum
- 6 Fed. Reg. pages 7 30 24

- 7 SCC et al. 3 29 22 scoping comments
- 8 Reclamation 3 30 22 confirmation
- 9 SWRCB 7 9 24 danger advisory
- 10 SCC et al. 8 8 24 extension request letter
- 11. Hoopa Valley Tribe 8 21 24 extension request letter

END NOTES

¹ The NEPA Regulations are codified at 49 C.F.R. § 1500.1 et seq.

² *The SMART Alternative to Tunnel(s): A Sensible Water Management Portfolio* at p. 2, Sierra Club California (May 2019) referencing Peter Glick et al. *The Untapped Potential of California's Water Supply: Efficiency, Reuse, and Stormwater*. Pacific Institute and Natural Resources Defense Council, June 2014. Available at <https://pacinst.org/wp-content/uploads/2014/06/ca-water-capstone.pdf>.

³ Climate Equity and Seismic Resilience for the San Francisco Bay-Delta Estuary, p. 6, Restore the Delta (2019.)