



December 13, 2021

California Water Commission
P.O. Box 942836
Sacramento, California 94236-0001

Submitted electronically to: cwc@water.ca.gov

Re: Public Comment for Commission Findings on the Del Puerto Canyon Reservoir Project, Pacheco Reservoir Expansion Project, and the Sites Reservoir Project

Dear Chair Alvarado, Commissioner Swanson, Commissioner Arthur, Commissioner Curtin, Commissioner Gallagher, Commissioner Makler, Commissioner Solorio, Commissioner Steiner, and Executive Officer Yun,

Friends of the River (FOR), a statewide organization dedicated to protecting and restoring rivers, and allied organizations write to respectfully request that the California Water Commission (Commission) find that the Sites Reservoir Project, the Pacheco Reservoir Expansion Project, and the Del Puerto Canyon Reservoir Project have not met the public funding requirements under Proposition 1's Water Storage Investment Program (WSIP). The Del Puerto Canyon Reservoir Project proponents have a late entry into the Proposition 1 process, have not completed all feasibility studies as required by law, and therefore should not be found eligible for public funds. The Pacheco Reservoir Expansion Project is not legally, economically, financially, or environmentally feasible. Finally, the Sites Reservoir Project is not economically, financially, or environmentally feasible, and the required feasibility documents for the project are not complete.

Background

In 2014, Californians voted for Proposition 1, which directed \$2.7 billion dollars of public money for the "public benefits" of new water storage, reviving the prospects for a series of previously dead surface water projects.

After years of regulatory review, public benefit determinations and funding allocations, the Commission is now faced with regulatory deadlines at the December 15, 2021 meeting.

Water Code §79757 and the California Code of Regulations, Title 23 Division 7, §6014(f)(2) requires that that:

“(a) A project is not eligible for funding under this chapter unless, by January 1, 2022, all of the following conditions are met:

- (1) All feasibility studies are complete and draft environmental documentation is available for public review.
- (2) The commission makes a finding that the project is feasible, and will advance the long-term objectives of restoring ecological health and improving water management for beneficial uses of the Delta.
- (3) The director receives commitments for not less than 75 percent of the nonpublic benefit cost share of the project.”¹

A key determination before the Commission is the finding of “feasibility.” The 2016 Water Storage Investment Program Technical Reference (WSIP TR) defines feasibility to include:

Technical Feasibility – the applicant must demonstrate that the project is technically feasible consistent with the operations plan, including a description of data and analytical methods, the hydrologic period, development conditions, hydrologic time step, and water balance analysis showing, for the with- and without-project condition, all flows and water supplies relevant to the benefits analysis.

Environmental feasibility – the applicant must demonstrate the project is environmentally feasible. The applicant must describe how significant environmental issues will be mitigated or indicate if the California Environmental Quality Act (CEQA) lead agency has or will file a Statement of Overriding Considerations (SOOC).

Economic feasibility – the applicant must demonstrate that the expected benefits of the project equal or exceed the expected costs, considering all benefits and costs related to or caused by the project.

Financial feasibility – the applicant must demonstrate that sufficient funds will be available from public (including the funds requested in the application) and nonpublic sources to cover the construction and operation and maintenance of the project over the planning horizon. It must also show that beneficiaries of non-public benefits are allocated costs that are consistent with and do not exceed the benefits they receive.²

There have also been changed circumstances for California since the passage of Proposition 1 in 2014. Just in the last two years, the state has experienced a deadly pandemic and

¹ See Water Code §79757 and the California Code of Regulations, Title 23 Division 7, §6014(f)(2) (emphasis added).

² See WSIP TR, p. 3-6.

climate extremes – including severe drought, catastrophic wildfires, flooding, and deadly heat waves. These impacts have tested California’s water management system. New research has also been published showing even existing surface water storage is vulnerable to these climate impacts, and not the most resilient form of water storage moving forward.³ In light of these changes, FOR urges the Commission to carefully review the legal requirements for Sites, Pacheco, and Del Puerto Canyon projects.

Del Puerto Canyon Reservoir Project

The Del Puerto Canyon Reservoir Project (DPCR) is a screening project, thus a late and ill-fitting entry in the competition for the remaining \$64 million or more of funds to be allocated in a potential second round of WSIP allocations. The Del Puerto Canyon Reservoir Project is more environmentally damaging than disclosed in the environmental impact report (EIR) and has not completed all of its feasibility reports required under Proposition 1.

The first page of the staff report characterizes the project as providing new 82,000 acre-feet of Central Valley Project (CVP) storage. The proposed reservoir would not be a CVP reservoir, and the status of whether the reservoir’s water would remain CVP water is unclear. It is possible that all or part of the water would become Del Puerto Water District (DPWD) and perhaps San Joaquin River Exchange Contractor water. If so, this water would then be used for the promised deliveries to wildlife refuges and the owners’ purposes of local use or sales both utilizing Reclamation Warren Act contracts for uses requiring CVP facilities.

Feasibility Studies

Water Code §79757 and the California Code of Regulations, Title 23 Division 7, §6014(f)(2) requires that “[a]ll feasibility studies are complete.”

Commission staff reports that the applicants provided a consultant’s report finding the project feasible. *However, it does not appear that this report, alone, represents completion of all feasibility reports.*

Unlike the proposed Sites and Los Vaqueros Reservoirs, the other Commission Water Supply Investment Program (WSIP) projects seeking federal Water Infrastructure Improvements for the Nation Act of 2016 (WIIN) grants for federal purposes, there has been no Secretarial feasibility determination for the Del Puerto Canyon dam. Instead, the staff report says that, the day before the inauguration of a new President in 2021, the outgoing Department of the Interior Assistant Secretary for Water and Sciences notified the Congress of the Department’s

³ See Willis AD, Peek RA, Rypel AL (2021) Classifying California’s stream thermal regimes for cold-water conservation. PLoS ONE 16(8): e0256286. <https://doi.org/10.1371/journal.pone.0256286> ; see also “Scientific Bibliography: Dams and Reservoirs Emit Greenhouse Gases”, a compilation of the 37 most significant scientific studies that have analyzed the greenhouse gas emissions caused by the construction and operation of dams and reservoirs. Available at: <https://savetheworldsrivers.org/scientific-bibliography-dams-and-reservoirs-emit-greenhouse-gases/>

“intent...to find the project feasible.”⁴ *It would appear that not all feasibility studies are complete.*

To the extent that the federal determination of feasibility is contingent on a federal EIS envisioned to, in part, support the finding of federal benefits necessary for WIIN grant support, the federal EIS was scoped in the previous federal Administration but no draft EIS (expected last spring) has been released, nor has any federal EIS gone final on this project — nor could it be before the January 1, 2022, the Commission-determination deadline. The WIIN itself expires on December 16, 2021 (WIIN §4013). However, presumably the EIS would still be required for Warren Act contracts for use of federal canal facilities under traditional Reclamation law.

The applicant-provided feasibility report was to “[e]stablish the degree to which a federal benefit can be achieved through project implementation; and [p]osition the project for potential receipt of up to 25 percent WIIN Act funding for a “State-led” surface water storage project.⁵ However, a Secretarial determination has to be made before January 1, 2021 (WIIN §4007(i)), and no such determination has been made. Thus, the apparent awkward and unsuccessful repurposing of the consultant’s feasibility report developed for federal purposes to the WSIP and the consequent lack of compliance with WSIP feasibility regulations

The staff report states that the proffered feasibility study does not substantiate water supply increases and technical feasibility according to WSIP regulations. Rather, “these analyses would be required” in some future conditional eligibility determination or funding decision by the Commission.⁶ *It would appear that not all feasibility studies are complete.*

The staff report describes a review provided by the applicant by Reclamation of “design, cost estimates, and construction methods and schedule.” That “team identified three findings and recommendations that warranted further investigations:”

“Utility relocation poses a high risk to the project...”

“[S]ufficient quantity and/or type of material available within the specified the specified borrow areas to construct the dam embankments.”

Other “items in the project collectively may present a major risk to the cost estimate and schedule...”

Staff reports that these findings and recommendations have not been addressed in the feasibility report — presumably the consultant’s report.⁷ *It would appear that not all feasibility studies are complete.*

Staff is again unable to determine whether the project meets the definition of economic feasibility (benefits exceeding costs) under the Commission’s WSIP regulations.⁸ Staff also notes that the “lack of regional operations and hydrologic modeling of the with-project condition...also

⁴ See Commission Staff Report for Agenda Item 12(b) (hereinafter “DPCR Staff Report”), p. 4, available at: https://cwc.ca.gov/-/media/CWC-Website/Files/Documents/2021/12_December/December2021_Item_12b_DPCRFeasibility_Final.pdf

⁵ DPCR Staff Report, p. 4.

⁶ DPCR Staff Report, pp. 5–6.

⁷ DPCR Staff Report, p. 6.

⁸ *Id.*

impacts the economic feasibility analysis.”⁹ Staff again opines that a *future* submission of a full application for a conditional eligibility determination or funding decision might cure this shortcoming.¹⁰ *It would appear that not all feasibility studies are complete.*

Staff is unable to “determine that each beneficiary is allocated project costs equal to or less than its benefits received” and thus “cannot find DPCR meets the financial feasibility requirements of the Technical Reference.” The staff then charitably but importantly notes that “DPCR did not prepare the feasibility report to meet those requirements.”¹¹ *It would appear that not all feasibility studies are complete.*

Staff relies on the judgment of the final environmental impact report that increased water supply reliability to agriculture and refuges, mitigating capacity constraints on the Delta-Mendota Canal, and some local floodwater management benefits “outweigh the significant and unavoidable environmental impacts that result from the project.”¹² Here we have difficulty with this conclusion, which we believe reflects an incomplete analysis in the EIR. Project waters are expected to come from the Delta, and earlier staff discussion about the lack of an operations and hydrologic model and the inconsistent descriptions of whether these deliveries represent increased diversions were not provided to staff and thus are not part of staff’s environmental analysis. In our judgment, staff analysis thus is unable to evaluate whether the project would increase reliance on Delta imports and any consequent adverse environmental impacts in the Delta. *Thus, contrary to staff’s conclusions here, we conclude that not all feasibility studies are complete.*

There are other conditions and determinations than feasibility scheduled to be accomplished by the Commission at the December 15, 2021, meeting: (1) determination that a draft EIR is available (the final is available), (2) DWR’s receipt of assurances for the non-public project financing of the project, (3) and a determination that the project advances the long-term objectives of restoring ecological health and improving water management for beneficial uses of the Delta. Staff here relies on the Del Puerto and San Joaquin River Exchange Contractors Water Authority to conclude that the project would advance the long-term objectives and improving water management, consistent with the WSIP. For the reasons stated above, this charitable conclusion cannot be assumed with the information available to the Commission at this time. Indeed, FOR fails to see how this project can meet this requirement. Like the Sites and Pacheco projects, once the beneficiaries are sorted out and operational plans developed, Del Puerto Water District will divert more water from the Delta. Such projects necessarily should bear a heavy burden to demonstrate compliance with the Water Code and the Commission’s regulations.

Regardless of our disagreement with staff on the above matter, the staff recommendation on feasibility is unambiguous. According to staff, with regard to the Commission’s WSIP feasibility regulations, “[s]taff cannot determine whether the project meets the Technical Reference requirements for feasibility because DPCR has not completed a full application that

⁹ *Id.*

¹⁰ DPCR Staff Report, p. 8.

¹¹ DPCR Staff Report, p. 9.

¹² DPCR Staff Report, pp. 9-10.

includes information required from the Technical Reference” Without this information, neither can the Commission make such a determination.

The staff’s charitable recommendation that “the Commission inquire of the applicant regarding staff’s review of submitted documents before making a determination regarding DPCR’s feasibility” cannot cure the obvious lack of support for a Commission feasibility finding at this time.

General Reflections

Del Puerto Canyon Reservoir Project’s late entry into the Commission’s WSIP as part of a potential second round of funding screening process has made its request something of a long shot. However, information provided by screening applicants has to meet the same standards as do the seven remaining WSIP projects that received allocations. Neither the Water Code nor the Commission’s regulations distinguish between projects with allocations and those entering as screening projects.

The staff report on this project reflects understandable confusion about project operations and purposes. The staff report quotes the Final EIR that “[w]ater stored in the proposed reservoir is water that would have been delivered directly to Del Puerto or the Exchange Contractors or would have otherwise been delivered to and stored in San Luis Reservoir.” The staff report properly reports that if the former delivery option to San Luis Reservoir is chosen, “then there should be a water supply loss for San Luis [R]eservoir water users.” The staff report does not note that this potential competition might be becoming more intense with the current Reclamation project to expand San Luis Reservoir by 130,000 acre-feet. The potential Del Puerto Canyon reservoir becomes a way for Del Puerto Water District and the San Joaquin River Exchange contractors to divert and store under their control CVP Delta exports upstream of San Luis Reservoir. This is no doubt considered meritorious by the dam’s proponents, but it is not clear that in effect privatizing CVP water is in the state’s interest. The Water Commission should take a wider view.

The staff report also picks up the inconsistency of the project sponsors “to take delivery of water when it is available during wet periods and store it for use when supplies are limited” with proposed project operations.¹³ This no doubt conjures up visions of Joseph’s Book of Genesis prophecy to Pharaoh of the seven fat years to be followed by seven lean years and the consequent need to store away the grains for the famine years to come. However, the proposed operations (to the extent that conflicting descriptions can be relied upon) proposes to fill the reservoir every year and empty it every year, regardless as to how “lean” the water year is.¹⁴ Again, this feels more like an effort to allow these CVP contractors to in effect “privatize” CVP water and gain more freedom as to the use of the water (freed from Reclamation’s project mission shackles, as it were). It is difficult to understand how that serves the statewide purposes of Chapter 8 of Proposition 1.

¹³ DPCR Staff Report, p. 8.

¹⁴ *Id.*

Finally, staff also noted that the applicant documents show that “all of the capital costs allocated to ecosystem benefits (refuge water supply) are allocated to federal funds and none to state and local funds.”¹⁵ This statement is an artifact of the applicant document’s previous purposes of justifying WIIN grants. Since the advent of the Reclamation Act, water supply benefits are “reimbursable,” that is to be recovered in charges to contractors. Federal refuge water supplies are non-reimbursable, that is on the taxpayer’s dime. Proposition 1 offers a similar but not identical financing approach. Thus, the Commission needs to be wary about state and federal taxpayers paying for the same benefits twice, and kudos to staff for picking this up.

The applicants face uncertainty, the federal draft EIS that may have served as the basis for establishing federal non-reimbursable benefits has not been issued. Nor has the required Secretarial feasibility determination. The WIIN expires on December 16, 2021, thus the late and ill-prepared request for the December 15 Commission meeting. But the Commission has standards in law and regulation that do not, and should not, favor the ill-prepared.

It has to be noted that legislation has been introduced in Congress to permanently extend the WIIN. One bill (S. 1932, §103(e)) would also make water supply benefits federal largely non-reimbursable benefits. More than one hundred years of Reclamation “beneficiaries pay” policy and law could be changing — traditional principles that we believe should be retained. If legislation with that provision were to pass and the applicants’ request for Proposition 1 funding sustained, the applicants could receive federal subsidies for the “private” water supply and state and federal subsidies for “public” benefits. The Commission’s December 15, 2021, determinations may not be the last chance for the applicants for major public subsidies for this project.

Pacheco Reservoir Expansion Project

Santa Clara Valley Water District’s (Valley Water) Pacheco Reservoir Expansion Project, also known as the new Pacheco Dam Project, does not meet the public funding requirements under Proposition 1’s WSIP program. The Pacheco Dam Project has changed in significant ways subsequent to the initial application for public funds in 2017 and the subsequent conditional eligibility determination. The recently released Supplemental Feasibility Documentation Water Storage Investment Program: Pacheco Reservoir Expansion Project, dated November 2021, (“Feasibility Documentation”) fails to substantiate the feasibility of the changed Project as required by Water Code section 79757, subdivision (a) and section 1603 of Title 23 of the California Code of Regulations.

Conflict with Henry Coe State Park

Unlike the project described by Valley Water when the Commission provided the project with an allocation, the preferred alternative in the November 2021 Pacheco dam EIR places the reservoir within Henry Coe State Park. This should not be a trivial matter for the Commission. The California Public Resources Code (PCR) describes the nature of Park units in the State Park System:

¹⁵ DPCR Staff Report, p. 9.

PRC §5019.53. State parks consist of relatively spacious areas of outstanding scenic or natural character, oftentimes also containing significant historical, archaeological, ecological, geological, or other similar values. The purpose of state parks shall be to preserve outstanding natural, scenic, and cultural values, indigenous aquatic and terrestrial fauna and flora, and the most significant examples of ecological regions of California, such as the Sierra Nevada, northeast volcanic, great valley, coastal strip, Klamath-Siskiyou Mountains, southwest mountains and valleys, redwoods, foothills and low coastal mountains, and desert and desert mountains.

Developments (“improvements”) permissible in State Park units must fit through a narrow lens, a lens too narrow for a reservoir to fit through.

PRC §5019.53. Improvements undertaken within state parks shall be for the purpose of making the areas available for public enjoyment and education in a manner consistent with the preservation of natural, scenic, cultural, and ecological values for present and future generations. Improvements may be undertaken to provide for recreational activities including, but not limited to, camping, picnicking, sightseeing, nature study, hiking, and horseback riding, so long as those improvements involve no major modification of lands, forests, or waters. Improvements that do not directly enhance the public’s enjoyment of the natural, scenic, cultural, or ecological values of the resource, which are attractions in themselves, or which are otherwise available to the public within a reasonable distance outside the park, shall not be undertaken within state parks.

PRC §5001.9. (b) No new facility may be developed in any unit of the state park system unless it is compatible with the classification of the unit.

The upper ends of reservoirs result in “bathtub rings” barren of permanent vegetation much in conflict with the “natural, scenic, cultural, and ecological values” required to be preserved in in State Park units by the Public Resources Code. The 2017 Pacheco Dam and Reservoir concept was sited to avoid being located within the boundaries of Henry Coe State Park:

The proposed location of the new dam was selected to maximize capacity and to avoid impacts to Henry W. Coe State Park. The low ground elevation at Henry W. Coe State Park elevation of 710 feet, would be 16 feet above the reservoir full pool elevation. The boundary of Henry W. Coe State Park would be approximately 1,700 feet upstream from the expanded reservoir.¹⁶

Seismic issues caused the dam proposal to be move upstream and thus collide with Henry Coe State Park.

The preferred alternative in the EIR is demonstrably illegal and therefore should be presumed to be infeasible, a necessary and inescapable key finding for the Commission at its

¹⁶ Pacheco Reservoir Expansion Project Initial Study and Notice of Preparation (NOP), August 2017, p. 1-8.

December 15, 2021, meeting. Valley Water does not appear to have a technically or legally feasible dam and reservoir project before you.

Financial and Economic Feasibility

The new Pacheco Dam Project is not financially or economically feasible under the Commission's WSIP regulations. FOR reiterates Dr. Jeffrey Michael's independent financial analysis of the Feasibility Documentation.¹⁷ Summarized, Valley Water did not:

- follow established standards for valuing Project public benefits,
- justify the ecosystem benefits of the Project,
- accurately state the emergency water supply benefits or estimated benefits from M&I water supply and M&I water quality,
- and did not address important state standards for affordability, the local cost-of-living crisis, or recent state analysis showing Santa Clara water bills are unaffordable for disadvantaged communities in their ability-to-pay analysis.¹⁸

FOR urges the Commission to review this report carefully. At an estimated \$2.12 billion, double the original estimated cost of the Project, the proposed new Pacheco Dam is an expensive endeavor that drastically overestimates the project benefits. Valley Water is also relying on state taxpayers to contribute nearly \$500 million, but its customers will be expected to foot the remainder of the bill. The Commission report specifically notes that “[s]taff cannot determine whether or not Santa Clara County households are willing to pay this much for the benefits they will receive.”¹⁹ This is not a financially feasible or responsible way to approach any publicly-funded project. Even Valley Water's internal analysis showed that the Project is one of the highest risk projects under consideration in their 2040 Water Supply Master Plan.²⁰

In light of this analysis, FOR agrees that “[s]ubstantial modification and reanalysis would be required for this project to meet the minimum requirements for the Commission to make the necessary findings for WSIP funding.”²¹

Environmental Feasibility

The Pacheco Dam Project is also not environmentally feasible.²² In 2018, the Commission staff noted that the Pacheco Dam Project would have to rush to complete its feasibility studies and draft environmental documentation.

¹⁷ See Attachment to Public Comment Submitted by Osha Meserve, Soluri Meserve LLP, November 29, 2021.

¹⁸ When the Valley Water Board voted to continue this project, one Board Member was quoted saying, “All of us should work toward completing this project, as long as it takes and *how much it ever costs*.” (emphasis added)

¹⁹ See Commission Staff Report for Agenda Item 11, p. 14, available at: https://cwc.ca.gov/-/media/CWC-Website/Files/Documents/2021/12_December/December2021_Item_11_PREPFeasibility_Final.pdf

²⁰ Assessed risk categories included *cost*, implementation, operations, political implications/stakeholders, water supply reliability, and climate change. See Attachment 3 of Valley Water's October 22, 2021 Meeting Agenda Item 2.1, available at: <https://scvwd.legistar.com/LegislationDetail.aspx?ID=5186615&GUID=416421D9-406F-4949-9CD2-AEC50CA2C916&Options=&Search=>

²¹ See Soluri Meserve Comment Letter, p. 4.

²² See 2016 WSIP TR, pp. 1-4, 4-92 to 4-92; see also Cal. Code Regs., tit. 23, § 6004, subds. (a)(3), (a)(3)(B), (a)(4)(K).

Upon initial review of the draft EIR and supplemental feasibility documentation, FOR has found that Valley Water has rushed the environmental review process and failed to adequately disclose or mitigate the environmental effects of this expensive new dam project.

Overall, the draft EIR identifies 13 *significant and unavoidable* impacts of the project, four of which relate to Cultural and Tribal Cultural Resources.²³ This includes the complete destruction of sacred burial grounds and dozens of cultural sites over 3,000 years old.²⁴ There is no way to mitigate these awful impacts and that should be a primary consideration for the Commission.

The Commission Staff Report also outlines numerous concerns with supposed ecosystem benefits of the project, which are supposed to offset the lengthy list of environmental impacts. Notably, after identifying four concerns regarding the supposed \$1.491 billion²⁵ ecosystem benefits to Pacheco Creek, staff conclude that they “cannot judge whether the planned physical ecosystem benefit of the project is or is not worth the alternative cost. There is simply no evidence regarding willingness to pay for SCCC steelhead that supports either result.”²⁶

Friends of the River was also concerned about another aspect of this new Project, to put a reservoir on a portion Henry Coe State Park – the largest state park in Northern California. Not only is the Project illegal, but it seems counterintuitive to new state initiatives such as the 30 x 30 goals and Outdoor Access for All.²⁷

Finally, Friends of the River would like to remind the Commission that the new Pacheco Dam Project relies on exports from the San Francisco Bay-Delta. This could strain the already fragile ecosystem and in no way will “advance the long-term objectives of restoring ecological health and improving water management for beneficial uses of the Delta.”²⁸

We urge the Commission to consider these concerning impacts and find the Project is not feasible, rendering the new Pacheco Dam Project ineligible to receive further public funding under Proposition 1.

²³ See Soluri Meserve Comment Letter, p.3-4, *see also* Attachment 4 to California Water Commission Agenda Item 11, Comment by Scott Cashen, M.S.—Independent Biological Resources Consultant, December 1, 2021, available at: https://cwc.ca.gov/-/media/CWC-Website/Files/Documents/2021/12_December/December2021_Item_11_Attach_4_CashenComments.pdf

²⁴ See Soluri Meserve Comment Letter, p. 3-4; *see also* Krieger, Lisa. “Human Remains and Artifacts Found at Proposed Dam Site”, East Bay Times, August 16, 2017, available at: <https://www.eastbaytimes.com/2017/08/16/human-remains-and-artifacts-found-at-proposed-dam-site/>.

²⁵ See Soluri Meserve Comment Letter, Attachment p. 10.

²⁶ See Commission Staff Report for Agenda Item 11, p. 7-10, available at: https://cwc.ca.gov/-/media/CWC-Website/Files/Documents/2021/12_December/December2021_Item_11_PREPFeasibility_Final.pdf

²⁷ See California Native Plant Society Comment Letter, December 8, 2021, for further discussion on this issue. Available at: https://cwc.ca.gov/-/media/CWC-Website/Files/Documents/2021/12_December/December2021_Item_11_Attach_7_NativePlantSocietyComments.pdf

²⁸ See Valley Water’s 2020 Urban Water Management Plan (UWMP), p 40. The UWMP relies on a ten percent increase in exports from the already over-stressed and overallocated Bay-Delta, which is an increase of 130,000 acre-feet in 2030 to 142,000 acre-feet by 2045. The UWMP also relies on Pacheco as a future water supply source, though does not quantify the actual benefits. *See* UWMP Table 6-4, p. 39.

Sites Reservoir Project

The proposed Sites Reservoir Project is the most expensive of the projects that received WSIP allocations. It also has received the most generous state and federal taxpayer funding for design, permitting, and environmental work of any of the WSIP projects. WSIP funding for public benefits is contemplated to account for one quarter of project costs.

Initially conceived as a State Water Project facility, the project is now expected to be owned and operated by the Sites Reservoir Authority, an Authority largely formed by Sacramento Valley CVP settlement contractors. The majority of project funding, nevertheless, is expected to come from urban State Water Project Contractors, mostly in the south state.

Project feasibility for this project has relied on the availability of state and federal taxpayer subsidies for approximately half the cost of the project. Whether these become available rests on decisions by state agencies and the U.S. Congress, the latter because the most likely authority for federal funding, the Water Infrastructure Improvements Act of 2016 (WIIN), expires on December 16, 2021.

The other key element for project feasibility has been the conditions for diversions from the Sacramento River. The conditions on diversions proposed by the Department of Fish and Wildlife in comments on the original draft EIR were rejected by the Authority as making the project infeasible. The revised draft EIR continues to propose diversions inconsistent with the Department's recommendations on the original draft EIR. What the Department's position will be in the future or what the State Water Resources Control Board will decide in response to the Authority's request for water rights is uncertain.

There is another wrinkle of feasibility uncertainty. The previous General Manager of the Metropolitan Water District of Southern California opined in 2016 that he would not recommend to his board that Metropolitan invest in the project unless the then proposed Delta conveyance project was built or likely to be built.²⁹ As you know the Delta conveyance projects cost more than sixteen billion dollars and have drawn their share of controversy and litigation.

The Sites Project did receive a Secretarial feasibility determination letter. There was a federal feasibility report. However, the Secretarial determination letter was not for the smaller and presumably less capable value-engineered project proposed in the November 2021 draft EIS and EIR. It is unclear whether the present review could reverse the Authority's and Secretary's feasibility assessment/determinations — to say nothing of the opinions of the project's financial backers.

It is of course possible that the present environmental review will not be used to support WIIN subsidies for the project (the WIIN expires on December 16, 2021) and a second federal

²⁹ See "Is Sites Reservoir a savior for the Sacramento Valley – or a Delta tunnels project in disguise?", Ryan Sabalow and Dale Kasler, Sacramento Bee, November 13, 2016, available at: <http://www.sacbee.com/news/state/california/water-and-drought/article114201138.html>

feasibility determination. However, we believe that even after the expiration of the WIIN, the EIS will be used to support use of federal facilities (e.g., Red Bluff diversion dam), so a second feasibility determination might be forthcoming as a result of these reviews.

With this list of uncertainties and more, it should be difficult for the Commission to confidently opine on the project's feasibility.

Environmental Feasibility

Friends of the River and others are reviewing the Sites Revised Draft Environmental Impact Report/Supplemental Environmental Impact Statement (“RDEIR/SDEIS”) at this time. These comments and the Authority’s and Reclamation’s responses are likely to have a bearing on the environmental feasibility of the Project. Unfortunately, the late release of the RDEIR/SDEIS will deprive the Commission of the information submitted in response to this draft combined environmental review. That could prove regrettable. Our initial review does suggest that the RDEIR/SDEIS has at least the following relevant problems:

- Fails to include a reasonable range of alternatives.
- Fails to provide an accurate and stable project description.
- Fails to use an accurate environmental baseline – utilizes the Biological Opinions issued during the Trump Administration, currently in litigation.
- Fails to adequately assess environmental impacts.³⁰
- Fails to propose conditions on diversions that protect Sacramento River resources.

In summary, the Sites Project faces significant feasibility questions that are difficult to answer with any confidence at this time. With regard to the question of whether the Project “will advance the long-term objectives of restoring ecological health and improving water management for beneficial uses of the Delta,” those uncertainties exist as well. Operations remain dependent on conditions on diversions to be established by the State Water Resources Control Board, the construction of Delta transfer facilities, and the needs of a still uncertain pool of buyers of water diverted into Sites reservoir from the Sacramento River. A healthy degree of skepticism is warranted by the Commission on whether this Project will meet that Proposition 1 objective.

Conclusion

Thank you in advance for your review and consideration of this comment. We will also be attending the Commission Meeting on December 15, 2021. Please feel free to contact Friends of the River’s Senior Policy Advocate, Ron Stork, rstork@friendsoftheriver.org, or Resilient Rivers Director, Ashley Overhouse, ashley@friendsoftheriver.org, if you have questions, concerns, or require additional documentation.

Sincerely,

³⁰ See California Native Plant Society Comment Letter, December 13, 2021.



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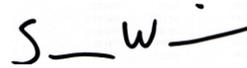
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