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Subject: Notice of Intent to Prepare a Draft Environmental Impact Statement, Revisions to the Coordinated Long-Term Operations of the Central Valley Project and State Water Project, and Related Facilities.

Dear Ms. Harrison:

Restore the Delta advocates for local Delta stakeholders to ensure that they have a direct impact on water management decisions affecting the water quality and well-being of their communities, and water sustainability policies for all Californians. We work through public education and outreach so that all Californians recognize the Sacramento-San Joaquin Delta as part of California's natural heritage, deserving of restoration and protection. We fight for a Delta whose waters are fishable, swimmable, drinkable, and farmable, supporting the health of the San Francisco Bay-Delta Estuary, and the ocean beyond. Our coalition envisions the Sacramento-San Joaquin Delta as a place where a vibrant local economy, tourism, recreation, farming, wildlife, and fisheries thrive as a result of resident efforts to protect our waterway commons.

We appreciate the opportunity to comment on the above-referenced notice of intent issued December 29, 2017, by the United States Bureau of Reclamation (USBR). It is our understanding that Reclamation proposes to evaluate alternatives that maximize water deliveries and optimize marketable power generation consistent with applicable laws, contractual obligations, and agreements; and to augment operational flexibility by addressing the status of listed species. We understand from the NOI that the EIS will be programmatic in nature, and that future project-specific EISs or other environmental review documents will be "tiered" off this EIS. Our comments address USBR's request for suggestions and information on alternatives and topics to be addressed, including other important issues related to the proposed action.

Further, we incorporate by reference the comments contained in the letter of Natural Resources Defense Council, Bay Institute, Defenders of Wildlife, and San Francisco BayKeeper submitted to the Bureau on January 30, 2018.

Specific Comments

1. USBR states that the purpose and need for the action is “to continue the operation of the CVP [federal Central Valley Project] in a coordinated manner with the SWP [State Water Project], for its authorized purposes, in a manner that enables Reclamation and California Department of Water Resources (DWR) to maximize water deliveries and optimize marketable power generation consistent with applicable laws, contractual obligations, and agreements; and to augment operational flexibility by addressing the status of listed species.”

The NOI clearly indicates that CVP operations will occur “in a coordinated manner with the SWP”—this means that this reinitiating must include preparation of an environmental impact statement that also complies with the provisions and requirements of the California Environmental Quality Act (CEQA) since the SWP’s operator is a state agency, DWR—or provide valid reasoning for why CEQA compliance was deemed unnecessary.

This language fails to acknowledge that the purpose and need for the EIS is to reinitiate Bureau consultation with other federal agencies charged with administering and enforcing the federal Endangered Species Act through use of the National Environmental Policy Act. This is significant because it ignores the past record of Bureau and fisheries agencies’ consultation which established reasonable and prudent alternatives (RPAs) for how the CVP and SWP operate throughout the Delta and in upstream tributaries of the Delta’s Central Valley watershed. Those previous consultations and environmental impact statements have resulted in the very reductions, due to projects’ effects on listed species, that USBR complains of when it states that “State and Federal regulatory actions, federal trust responsibilities, and other agreements, have significantly reduced the water available for delivery south of the Sacramento-San Joaquin River Delta, in order...to protect water quality within the delta and prevent jeopardy and adverse modification of critical habitat of threatened and endangered species.” This reasoning also ignores the fact that eight of the last twelve years have been dry or critically dry years, crimping south-of-Delta water supply reliability generally. The seven years of CVP and SWP operations under just D-1641 —prior to application of the 2008 Delta smelt and 2009 salmonid biological opinions—were correlated with emergence and spread of a Delta-wide “pelagic organism decline.” This systemic die-off of many different open water species was heavily studied by the estuary’s science community. The generally concluded that the estuary had entered a crisis state that was the result of interactions of many “stressors” including water project operations, pollutants, contaminants, and other stressors. The reason that CVP deliveries have been reduced under the federal Endangered Species Act is that projects’ operations at

higher levels of exports and deliveries would otherwise continue or worsen the abundance, genetic diversity, and survival of listed fish and other species in the Delta, and there is little reason to expect that—at least on sound scientific grounds—that restrictions on Delta exports imposed under these biological opinions should be eliminated or relaxed.

2. The EIS should address among the “stressors” the water quality effects of toxics and legacy contaminants like selenium, mercury, arsenic, pesticides, and other contributors to water quality degradation in the Delta. EIS preparers should follow and incorporate findings about these stressors from the Delta Independent Science Board’s recent water quality science review.
3. Recently, the State Water Resources Control Board approved new beneficial uses for tribal/cultural subsistence fishing and subsistence fishing generally. The EIS should evaluate impacts and potential mitigation measures for preventing impairment of these beneficial uses and degradation of water quality resulting from proposed program actions.
4. The NOI states that USBR will analyze potential changes to long-term operations of the CVP and SWP to: maximize water supply delivery, consistent with applicable law, contracts and agreements, considering new and/or modified storage and export facilities. The EIS misstates Bureau objectives and purposes for the CVP as stated in the Central Valley Project Improvement Act of 1992, whose purposes include operational protection of fish and wildlife as well as water delivery. Formulation of any and all alternatives must incorporate these purposes as fundamental to CVP operations in coordination with SWP operations. The EIS must clearly describe what regulatory changes will be made and considered.
5. The NOI is silent about WHAT modifications to regulatory requirements USBR will review and consider as part of the EIS. We have no regulatory requirement changes to recommend, since listed species continue to survive, although at a reduced level after five consecutive years of drought and a single flood year since 2011. We recommend none be incorporated into the alternatives USBR considers in this EIS.
6. The NOI states the EIS will “evaluate stressors on fish other than CVP and SWP operations, beneficial non-flow measures to decrease stressors, and habitat restoration and other beneficial measures for improving targeted fish populations.” Instead of the EIS evaluating stressors other than CVP and SWP operations, the alternatives evaluated in the EIS must evaluate *all* stressors affecting listed species, including CVP and SWP operations, otherwise, effective mitigation and RPA strategies will founder for having failed to acknowledge the relative contributions of different stressors to the population effects listed species experience in the altered ecosystems of the Delta estuary. It would be fallacious, arbitrary, and capricious for USBR to conduct an EIS process that did not properly situate CVP and SWP operations as an important stressor in the Delta context.

7. The NOI states the EIS will “evaluate potential changes in laws, regulations and infrastructure that may benefit power marketability.” But it fails to indicate what any of these “potential changes” may include. This makes it difficult to recommend whether some potential changes should or should not be included in the EIS from our perspective. Clearly, USBR is not looking for input from the public on how to scope this issue. We think, however, it would not be advisable to subject CVP and SWP operations to instabilities of electricity deregulation such as those California experienced in the state’s power market between 1999 and 2001. Among the effects of applying market principles to the state’s electric power market were frequent rolling blackouts that struck major cities in the San Diego region and the Bay Area. Such effects were unacceptable at that time, and are unacceptable today.
8. USBR is by federal law required to comply with state water law under section 8 of the Reclamation Act of 1902. Under state law (Delta Reform Act, DRA), it is the policy of our State to reduce reliance on the Delta for supplying California’s future water supply needs. Each alternative developed for this EIS must indicate how the alternative complies with this policy mandate (Water Code section 85021). Each alternative must also demonstrate how it will achieve the coequal goals contained in the DRA (Water Code section 85054).
9. There should be at least one alternative, for the EIS’s alternatives analysis to have a spectrum of reasonable alternatives, that reflects state policy to “make conservation a California way of life.”
10. It is an overarching goal of the federal Endangered Species Act to achieve the recovery and de-listing of rare, threatened, or endangered species. Through application of the ESA nationally, several species have rebounded through federal actions and management to achieve this purpose, including sea lions and wolves. A reasonable alternative should be included in this EIS that addresses what Delta in- and out-flows would be needed to achieve recovery of Delta smelt, longfin smelt, winter-run Chinook, salmon, and spring-run Chinook salmon, at a minimum.
11. The EIS should evaluate in every alternative the potential for adjustments in long-term coordinated operations to assist CVP and SWP south-of-Delta service areas to meet and achieve Sustainable Groundwater Management Act goals and policies.
12. The EIS should make clear that USBR is proposing to maximize exports and delivery potential of CVP and SWP to south-of-Delta contractors subject to all applicable laws and regulations. These should include presidential executive orders relating to environmental justice, as well as state policies concerning environmental justice, the human right to water, and civil rights non-discrimination laws and policies. If USBR proposes changes to federal regulations as part of its proposed action, such changes should be evaluated to disclose all environmental impacts and potential mitigation measures, including water supply, water quality, aquatic and

terrestrial species, cultural resources, public services and utilities, land use, air quality, seismic risk, environmental justice, and many other environmental issue areas. The Delta and its upstream watersheds should be central to the scope of the proposed EIS.

13. The California Environmental Quality Act requires that lead agencies identify in their environmental impact reports the alternative that is environmentally superior to all others, including the proposed action/project.

Thank you for the opportunity to comment on this NOI. Please include our contact information on routing of any direct communications the USBR may have related to this proposed action and EIS.

Sincerely,



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