



Directors

Edward J. "Ted" Costa

Kenneth H. Miller

Dave Peterson

Pamela Tobin

Bob Walters

General Manager

Shauna Lorange

October 31, 2012

Ms. Sue Fry  
Manager, Bay Delta Office  
Bureau of Reclamation, Mid Pacific Region  
801 I Street, Suite 140  
Sacramento, CA 95814

Subject: Comments on Project Description Initial Range of Alternatives

Dear Ms. Fry:

Thank you for the opportunity to comment on the initial range of alternatives for the required NEPA analysis of Reclamation's proposed implementation of the Reasonable and Prudent Alternatives ("RPAs") in the remanded smelt and salmon biological opinions ("BOs"). I appreciate the opportunity to participate in the remand stakeholder group. As requested of all participants, I have collected comments from the other water users in the American River watershed. Both San Juan Water District ("SJWD") and other water users in the American River watershed have significant concerns about Reclamation's proposed initial range of alternatives for its NEPA review, most importantly with the proposal that the RPAs in the remanded BOs, parts of which were found to be legally inadequate by the federal courts, be used as the baseline no-project alternative.

*Reclamation Cannot Use the RPAs as the Proposed No Action Alternative*

Our concerns center on the description for the no-action alternative. Reclamation cannot use the implementation of the RPAs as the no action alternative. The district court remanded the BOs to FWS and NMFS for further review in accordance with applicable law because they were deemed legally insufficient. The court's decisions and judgments require Reclamation to perform NEPA review precisely because it failed to consider the environmental and human impacts of provisionally agreeing to accept the BOs and to implement the RPAs. As a result, Reclamation cannot justify using the RPAs as a no action alternative when the RPAs as proposed in 2008/2009 currently have not been properly analyzed and have not yet been found to have legal effect. After remand, the proposed BOs and the final RPAs might be significantly different than

those FWS and NMFS previously proposed. More important, Reclamation's proposal to use the RPAs as the existing project when it has failed in the first place to perform the appropriate environmental review for their implementation is both illogical and contrary to law.

One outcome of the court's decisions to remand the BOs is that Reclamation is required to evaluate the impacts of implementing the recommended actions in the RPAs. Reclamation's initial proposed action for its NEPA review is to evaluate the implementation of the operational provisions of the RPAs as part of the 2011 project description. This raises an issue with the proposed action, which appears to be for Reclamation to implement fewer actions than those in the proposed no-action alternative. This approach is internally inconsistent and illogical. If Reclamation follows this approach, it will result in comparing what effects implementing less than all of the RPAs will have as compared with the proposed baseline of implementing all the RPAs.

I understand that the intent is to compare all alternatives to each other. Even taking that intent into consideration, the American River water users believe that the appropriate baseline, and therefore no-action alternative, is the manner in which Reclamation operated the projects prior to the services' issuance of the BOs and RPAs, and to compare that pre-BO operation to one or more alternatives describing operations that include implementation of some suite of actions in the RPAs or other actions that might accomplish the same results. The comparison of the initial proposed action and other alternatives with the no action alternative would provide an appropriate analysis under NEPA of the environmental and socio-economic effects of implementing the biological opinion RPAs. This is what the court ordered to be evaluated.

SJWD and other American River water users believe that the problem with Reclamation's proposal to use the 2011 Project Description with the RPAs as the no action alternative for the required NEPA analysis can be easily remedied. Proposed Alternative 1 as shown in Reclamation's October 19, 2012 slide presentation to the RSE group can be used as the no action alternative and the currently proposed no action alternative can be designated as Alternative 1. This arrangement better reflects the applicable NEPA law and still ensures that the implementation of the RPAs as currently proposed can be fully analyzed in the NEPA document.

#### *Lower American River Flow Management Standard*

The range of alternatives should include an alternative in which the operation of the CVP and SWP is focused on preventing Folsom, Shasta and Oroville Reservoirs from reaching dead pool levels at any point under future level of demands using historic

hydrology. Such an alternative respects NEPA's requirement that all environmental and socio-economic impacts of Reclamation's operation of the projects with DWR be fully analyzed. The damage to Delta and upstream economies and ecosystems that would result from currently planned operations would be vast. We believe that an understanding of the consequences of the likely harms resulting from those actions would be valuable for future decision-making.

The American River water users are particularly concerned that the NEPA document addresses the potential effects of the implementation of the 2006 Flow Management Standard on all resources that rely on the American River. The potential impacts of the standard have been extensively modeled by HDR for the Water Forum and that modeling should be incorporated into the NEPA analysis. The NEPA analysis should include not only aquatic and terrestrial species that might be impacted, but also the living situation and economic resources of the region's people. One example is the need to analyze the interaction of potential reductions in the availability of surface water supplies with existing groundwater resources, including the need for the continued availability of sufficient surface water to operate conjunctive use projects such as in lieu groundwater recharge and ASR to ensure sufficient dry year supplies and to keep existing contaminant plumes confined until they can be fully remediated.

#### *Full Implementation of Term 14*

SJWD also believes that Reclamation must include the full implementation of Term 14 in its American River Division water right permits as part of the baseline conditions assumed for the DEIS. Term 14 is an existing legal requirement that requires Reclamation to ensure that it provides a priority to water supplies to American River CVP contractors that signed a water supply contract with Reclamation by 1975. Such water users include SJWD, City of Folsom, PCWA, and SMUD. The State Water Resources Control Board ("SWRCB") inserted Term 14 into Reclamation's permits in Decision 893 ("D-893") as a substitute for approving competing water right applications filed by various American River water users. In D-893, the SWRCB explicitly stated that Term 14 was meant to ensure that exports of water from Folsom Reservoir would not interfere with a first priority to fulfill the needs in Placer, Sacramento and San Joaquin Counties. Regardless of how Reclamation proposes to address this priority to water supplies granted to certain American River agencies or even Reclamation's opinion of Term 14, it cannot be ignored in the NEPA analysis.

*Existing Analysis of a Proposed TCD on EID's Folsom Intake*

The NMFS RPAs included a requirement for Reclamation to provide funding and technical assistance for the construction of a temperature control device on El Dorado Irrigation District's ("EID") intake facilities from Folsom Lake. EID agrees that it is appropriate to include this published RPA in the range of alternatives. However, the NEPA impacts analysis should reflect modeling studies commissioned by EID and Reclamation's Central Area Office and conducted by HDR Engineering over the past year, which show that such a device would produce negligible improvements to cold-water pool management in Folsom Reservoir, particularly in comparison to other identified structural RPAs at Folsom Dam. Of course, those actions that have not received the same level of analysis as the proposed TCD on EID's intake must be fully analyzed in the NEPA document.

The comments in this letter address Reclamation's proposed initial range of alternatives for its NEPA review for addressing the BOs. As the final range of alternatives is selected, SWJD and the other American River water users will address the more specific issues identified in this letter related to those alternatives.

Again, thank you for providing an opportunity to comment on Reclamation's proposed initial range of NEPA alternatives. The American River water users appreciate the collaborative process Reclamation has initiated.



Sherrill Lorraine  
General Manager  
San Juan Water District

cc: SJWD Board of Directors  
Steve Nugent, CWD  
Rob Roscoe, SSWD  
Jim Peifer, City of Sacramento  
Einar Maisch, PCWA  
Derrick Whitehead, City of Roseville  
Ken Payne, City of Folsom  
John Woodling, RWA  
Tom Cumpston, EID  
Josh Horowitz, BKS