



March 25, 2024

Bureau of Reclamation
Attn: LTEMP SEIS Project Manager
125 South State Street, Suite 800
Salt Lake City, UT 84138
LTEMPSEIS@usbr.gov

Re: Comments re Glen Canyon Dam Long-Term Experimental and Management Plan (“LTEMP”) Draft Supplemental Environmental Impact Statement (“DSEIS”)
– (89 Fed. Reg. 28, (Feb. 9, 2024))

Dear Project Manager:

Maricopa Water District (“MWD”) appreciates the opportunity to provide comments in on the important strategic analysis at issue in this DSEIS, namely the available alternatives to reduce the threat of smallmouth bass below the Glen Canyon Dam (“GCD”). We support the concept of preventing establishment of smallmouth bass and other nonnative warmwater invasive fish, but the DSEIS fails to sufficiently analyze alternatives that mitigate health and safety concerns resulting from the loss of GCD summer electric capacity, in a time where market purchases may not be available to replace the loss. Accordingly, we submit the following comments on the DSEIS and encourage the Bureau of Reclamation (“BOR” or “Reclamation”) to ensure an outcome that is equitable, sustainable, and compliant with the requirements of the National Environmental Policy Act (“NEPA”). As drafted, the DSEIS does not meet NEPA’s requirement to explore available alternatives.

MWD provides electric service to customers in Maricopa County, Arizona. MWD is a long-time Firm Electric Service (“FES”) contractor with Western Area Power Administration (“WAPA”) for capacity and energy provided by the Colorado River Storage Project (“CRSP”). A majority of the CRSP system’s critical summer generation and capacity comes from GCD. MWD is concerned about the short-term reliability impacts associated with the unavailability of capacity, whether due to LTEMP provisions rendering GCD generation unavailable, or due to increased demand on regional markets for summer peaking power. MWD has reviewed the DSEIS, the input from stakeholders leading up to the DSEIS, and comments prepared for the DSEIS. MWD wholly supports and agrees with the thoughtful comments of CREDA, IEDA, and SRP. The DSEIS omits reasonable alternatives that could disrupt the establishment of smallmouth bass below GCD without flow modifications that diminish GCD electric generation and capacity. The DSEIS further fails to include adequate and meaningful discussion of the environmental and public safety effects that alternatives will impose on the electric utilities who receive electric generation and capacity from GCD, and the retail customers those electric utilities serve, due to the loss of summer electric capacity.

I. EIS Legal Standard

NEPA requires that an EIS must consider and assess the environmental consequences of the proposed action and reasonable alternatives to the action. 40 C.F.R. § 1502.14. “Consideration

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of alternatives” is “the heart of the environmental impact statement.” *Westlands Water Dist. v. U.S. Dept. of Interior*, 376 F.3d 853, 865 (9th Cir.2004). Reclamation must “specify the underlying purpose and need for the proposed action” which provides the framework for analyzing the range of alternatives that must be discussed in an EIS. *Id.*, citing 40 C.F.R. § 1502.13; *see also*. *City of Carmel–By–The–Sea v. U.S. Dep’t of Transp.*, 123 F.3d 1142 (9th Cir.1995). “The stated goal of a project necessarily dictates the range of ‘reasonable’ alternatives and **an agency cannot define its objectives in unreasonably narrow terms.**” *Id.* at 1155 (citing *Citizens Against Burlington, Inc. v. Busey*, 938 F.2d 190, 192 (D.C.Cir.1991)). “Project alternatives derive from an [EIS’s] ‘Purpose and Need’ section.” *Id.*

An EIS must “[r]igorously explore and objectively evaluate all reasonable alternatives,” “[i]nclude reasonable alternatives not within the jurisdiction of the lead agency,” and “[i]dentify the agency’s preferred alternative.” *Id.*, citing 40 C.F.R. § 1502.14(a), (c), (e). “**The existence of a viable but unexamined alternative renders an environmental impact statement inadequate.**” *Id.* quoting *Morongo Band of Mission Indians v. Fed. Aviation Admin.*, 161 F.3d 569, 575 (9th Cir.1998). The EIS must consider reasonable alternatives that are feasible, effective and consistent with the basic policy objective of the EIS so that the “discussion of alternatives fosters informed decision-making and informed public participation.” *Id.* quoting *Calif. v. Block*, 690 F.2d 753, 767 (9th Cir. 1982).

II. The DSEIS does not explore and objectively evaluate all reasonable alternatives

The availability of nonflow alternatives to disrupt smallmouth bass populations needs to be evaluated in this SEIS, and not left to another “future NEPA actions” as proposed. (DSEIS, at 1-6). Narrowing the purpose of the DSEIS to only “analyze additional flow options at [GCD]” is just the type of “unreasonably narrow” objective that courts have chastised. (*Id.*) *See Westlands Water Dist.*, 376 F.3d at 1155. The single-minded focus on flows drives the process to overlook reasonable alternatives to addressing the identified need. As raised by IEDA and members of the GCD Adaptive Management Work Group, including SRP, alternative potential solutions to prevent entrainment include manipulation of reservoir elevation, application of a thermal curtain or barrier net, habitat modifications, and physical modifications to address the -12-mile slough where the smallmouth bass and other invasive fish spawn. Failure to analyze these actions that address the identified need, when the costs of bypass flows to electric reliability are so significant, would be indefensible. Failure to examine these viable alternatives to flow modifications would render the DSEIS legally inadequate. *See Westlands Water Dist. v. U.S. Dept. of Interior*, 376 F.3d 853, 865 (9th Cir.2004).

III. The DSEIS does not adequately identify the effects on the public of a significant loss of summer electric capacity when market replacement resources may be scarce

Due to drought and changing regional electric wholesale market conditions, the availability of market purchases of electric capacity and generation during critical summer months is not assured. The DSEIS bypass flow alternatives assume that WAPA will be able to purchase replacement power to fulfill its contractual obligations to customers. (*See* DSEIS at 3-19.) The

DSEIS briefly notes that WAPA's operational flexibility is affected by the availability and price of replacement power, (*Id.* at 3-20), but does not appear to analyze the availability or price of the replacement power the DSEIS identifies will be needed under the bypass alternatives. (*Id.* at 3-19). MWD is affected first-hand by the electric power spot market. In the rush to replace GCD generation, WAPA and its contractors (including MWD) will all be looking for replacement power in the same capacity-short market environment forcing prices to rise. Transmission constraints could further squeeze market replacement power purchases. MWD has watched as increasingly drastic weather has caused the large importation of market purchases into the desert southwest, forcing the price of power to exceed \$300/MWh, and spike to over \$1,000 in times of shortage.

As the Supreme Court has recognized, “[i]mplicit in NEPA’s demand that an agency prepare a detailed statement on ‘any adverse environmental effects which cannot be avoided should the proposal be implemented,’ ... is an understanding that the EIS **will discuss the extent to which adverse effects can be avoided.**” *Robertson*, 490 U.S. at 352. MWD agrees with CREDA, IEDA, and SRP’s comments that there are significant constraints on available capacity in the summer months. There are legitimate concerns that replacement capacity and peaking generation will not be available on the market to fill the loss of GCD.¹ This could lead to grid unreliability, which can threaten public safety. The DSEIS must be redrafted to analyze the effects of flow modifications on grid reliability, and must discuss the extent to which those adverse effects can be avoided via pursuing other mitigation opportunities, such as maintaining on-peak generation in the flow-based alternatives.

IV. Conclusion

MWD asks that Reclamation critically analyze all available alternatives to disrupt smallmouth bass populations below GCD. The inclusion of one non-bypass flow alternative is insufficient to address the concerns raised in response to the Environmental Assesses, as the DSEIS nonetheless fails to articulate or mitigate the effect on regional grid reliability caused by the loss of GCD generation.

Sincerely,



Glen Vortherms
Manager

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¹ MWD in particular concurs in CREDA’s comment that Hydropower Modeling Assumptions/TMax should be rewritten by WAPA, as the Power and Energy analysis included in the DSEIS does not appropriately disclose an analysis of the effects, as required for either public comment or a final decision by the Secretary.