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November 5, 2018

VIA U.S. AND ELECTRONIC MAIL (WATERFIXCOMMENTS@ICF.COM)

WaterFix Comments 2018
P.O. Box 1919
Sacramento, CA 95812

Re: Comments on September 2018 Draft Supplemental Environmental Impact Report/Environmental Impact Statement - California WaterFix

Dear Sir or Madam:

The North Delta Water Agency (NDWA or Agency) respectfully submits the following comments on the Draft Supplemental Environmental Impact Report/Environmental Impact Statement (Draft SEIS) for the Bay Delta Conservation Plan/California WaterFix project (WaterFix Project or CWF).¹ In brief, the Draft SEIS is flawed insofar as it relies on the faulty analysis and assumptions contained in the December 2016 Final Environmental Impact Report/Environmental Impact Statement (Final EIR/EIS), DWR's July 2018 Supplemental Environmental Impact Report (Draft SEIR), and other prior environmental review documents. The comments provided by NDWA on the July 2018 Draft SEIR are equally applicable to this document, and are attached hereto as Exhibit A and incorporated herein by reference. The attached comments are intended to provide Reclamation with notice of these flaws, and to afford it the opportunity to rectify these errors prior to completing its review under NEPA and issuing a Record of Decision with respect to its participation in the WaterFix Project.

In the Draft SEIS, Reclamation and DWR take the position that the WaterFix Project's operations, including water diversions and deliveries, "are not changing from those described" for the WaterFix Project approved by DWR on July 21, 2017. In its transmittal document, Reclamation likewise explains that "[n]o additional analyses are presented for effects of water operations in this Supplemental EIR/EIS because the Refined Alternative 4A and Alternative 4A water conveyance operations would be identical," and the federal action contemplated in the Draft SEIS is the same as that described in the December 2016 Final EIR/EIS. However, the WaterFix Project described in the December 2016 Final EIR/EIS has changed, including changes disclosed by DWR in connection with its July 2017 certification of the Final EIR that Reclamation has never analyzed. In addition, changes to the Project, and the circumstances surrounding the Project, have occurred since July 2017, so Reclamation cannot rely on the

¹ NDWA has offered considerable feedback during the United States Bureau of Reclamation's (Reclamation) review of the WaterFix Project's previous iterations under the National Environmental Policy Act (NEPA), and the California Department of Water Resources' (DWR) environmental review under the California Environmental Quality Act (CEQA). Those comments have not been adequately addressed and the Agency incorporates herein by reference all comment letters previously submitted in connection with that review.

December 2016 Final EIR/EIS or on the documents issued by DWR in connection with its certification of the Final EIR for an adequate depiction of the current CWF and its impacts.

For example, WaterFix Project operations (and their resultant impacts) were described and analyzed in the December 2016 Final EIR/EIS using modeling and assumptions of the Final EIR/EIS Alternative 4A. In July 2017, DWR certified the Final EIR, relying on new modeling that later became known as CWF H3+. A substantially different set of Project operations and parameters was revealed in that new modeling, including, for example, the removal of fall export restrictions from the south Delta pumps. In addition, the Project's operational parameters and underlying assumptions were changed by new spring outflow criteria imposed by an incidental take permit issued by the California Department of Fish and Wildlife for the WaterFix Project following DWR's certification of the Final EIR. Those criteria are different than those analyzed in the CWF H3+ modeling.² Expert evidence introduced in the water rights change petition hearing for the Project shows that the removal of export restrictions results in substantial adverse changes to Delta water quality, through increased salinity.³ And there is nothing in the 2016 Final EIR/EIS that analyzes how the new spring outflow criteria will be met and whether water stored in upstream reservoirs will be impacted. These substantial changes to the Project have not been described, nor considered in the prior environmental documents.

Before approving the WaterFix Project, Reclamation must “consider every significant aspect of the environmental impact of [the] proposed action,” including the changes to water supply and operations wrought as a result of these unanalyzed changes.⁴ In addition, Reclamation has an obligation under NEPA to “‘rigorously explore and objectively evaluate all reasonable alternatives’ to a proposed plan of action that has significant environmental effects.”⁵ In this analysis (which is the “heart” of an EIS), it must “[d]evote substantial treatment to each alternative considered in detail including the proposed action so that reviewers may evaluate their comparative merits.”⁶ The presence of a prior-issued EIS does not relieve an agency of this responsibility—rather, “NEPA obliges an agency to revisit its alternatives analysis, including a true no action alternative, whenever there are changed circumstances that affect the factors relevant to the development and evaluation of alternatives.”⁷

However, the Draft SEIR/SEIS “does not reevaluate the alternatives contained in the Final EIR/EIS.” Draft SEIR/SEIS, p. ES-2. In its transmittal document, Reclamation explained that “[n]o additional analyses are presented for effects of water operations in this Supplemental

² See SVWU-402, at page 3 (“CWF ITP Delta outflow criteria are different than those analyzed in DWR/USBR CWF H3+.”)

³ See, e.g., Exhibit DWR-1027, Power Point Presentation of Tara Smith, submitted to the State Water Resources Control Board in the WaterFix water rights change petition hearing, pp. 5, 18-20, 24-25 (https://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_waterfix/exhibits/docs/petitioners_exhibit/dwr/part2/DWR-1027%20PPT%20Smith.pdf)

⁴ *Ore. Natural Desert Ass'n v. BLM*, 531 F.3d 1114, 1130 (9th Cir. 2008) (citing *Vermont Yankee Nuclear Pwr. Corp. v. Natural Res. Def. Council*, 435 U.S. 519, 553 (1978)).

⁵ *NRDC v. USFS*, 421 F.3d 797, 813 (9th Cir. 2005) (citing 40 C.F.R. § 1502.14(a)).

⁶ 40 C.F.R. § 1502.14(a), (b).

⁷ *Oregon Nat. Res. Council Action v. U.S. Forest Serv.* 445 F. Supp. 2d 1211, 1224 (D. Or. 2006) (citing *Natural Res. Def. Council v. United States Forest Serv.* (9th Cir. 2005) 421 F.3d 797, 809, 813-14).

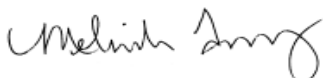
EIR/EIS because the Refined Alternative 4A and Alternative 4A water conveyance operations would be identical.”⁸

However, the WaterFix Project and the circumstances surrounding it substantially changed after the Final EIR/EIS was released in December 2016, and changed again following DWR’s certification of that document in July 2017. Those changed circumstances are directly relevant to the development and evaluation of alternatives. In order to comply with NEPA, Reclamation must revisit its alternatives analysis in light of the changed circumstances described above and identified in NDWA’s comment letter on the July 2018 Draft SEIR.

Substantial evidence reveals that the changes to the WaterFix Project since the Final EIR/EIS was released in December 2016 will result in substantial changes in the proposed action that are relevant to environmental concerns. These changes amount to significant new circumstances or information that is relevant to environmental concerns and the impacts of the proposed action, and must therefore be addressed in a supplemental EIS. *See* 40 C.F.R. § 1502.9(c). Given the extent of the problems identified in the prior versions of the EIS, and the confusion caused by the many changes in the Project since the publication of the Draft EIS in 2013, and the Recirculated Draft EIS in 2015, and the many changed circumstances surrounding the Project, the new EIS should clearly describe and evaluate the current WaterFix Project, in its entirety, including appropriate alternatives. The environmental documents issued by Reclamation to date fail to allow the public to clearly understand the Project as it is currently proposed, or the full scope of its significant impacts.

NDWA appreciates Reclamation’s consideration of these comments and those incorporated herein.

Sincerely,



Melinda Terry,
Manager

Enclosures

⁸ Transmittal document, “Additional Information Regarding Comparison of Alternatives,” p. 2.